

BALTIC SEA ENVIRONMENT PROCEEDINGS

No. 77

BALTIC LEGAL MANUAL

**Information on anti-pollution regulations at sea and
the prosecution of violations thereof
in the Baltic Sea Area**



**HELSINKI COMMISSION
Baltic Marine Environment Protection Commission**

BALTIC SEA ENVIRONMENT PROCEEDINGS

No. 77

BALTIC LEGAL MANUAL

Information on anti-pollution regulations at sea and
the prosecution of violations thereof
in the Baltic Sea Area

HELSINKI COMMISSION
Baltic Marine Environment Protection Commission
2000

For bibliographic purposes this document should be cited as:
HELCOM, 2000
Baltic Legal Manual - Information on Anti-pollution Regulations at Sea
and the Prosecution of Violations Thereof in the Baltic Sea Area
Baltic Sea Environ. Proc. No. 77

Information included in this publication or extracts thereof
are free for citing on the condition that the complete reference
of the publication is given as stated above.

Copyright 2000 by the Helsinki Commission
- Baltic Marine Environment Protection Commission -

ISSN 0357-2994

TABLE OF CONTENTS

Preface	1
Compilation of information on anti-pollution regulations at sea and the prosecution of violations thereof in the Baltic Sea States	3
1 Environmental enforcement jurisdiction within the Baltic Sea Area	3
1.1 Summary	3
1.1.1 Breadth of territorial seas and establishments of exclusive economic zones	3
1.1.2 Rights and duties of enforcement	3
1.1.3 Application of anti-pollution regulations to all ships, irrespective of flag	3
1.2 Specific information from:	3
1.2.1 Denmark	3
1.2.2 Estonia	4
1.2.3 Finland	4
1.2.4 Germany	5
1.2.5 Latvia	6
1.2.6 Lithuania	6
1.2.7 Poland	6
1.2.8 Russia	7
1.2.9 Sweden	7
2 Implementation by the Baltic Sea States of MARPOL 73/78 and the Helsinki Convention	7
2.1 Summary	7
2.2 Specific information from:	7
2.2.1 Denmark	7
2.2.2 Estonia	7
2.2.3 Finland	8
2.2.4 Germany	9
2.2.5 Latvia	9
2.2.6 Lithuania	9

2.2.7	Poland	10
2.2.8	Russia	10
2.2.9	Sweden	11
3	Practices of the Baltic Sea States in enforcing anti-pollution regulations	11
3.1	Summary	11
3.2	Specific information from:	12
3.2.1	Germany	12
3.2.2	Lithuania	12
4	Investigation and Prosecution	13
4.1	Summary	13
4.2	Specific information from:	13
4.2.1	Denmark	13
4.2.2	Estonia	14
4.2.3	Finland	15
4.2.4	Germany	16
4.2.5	Latvia	17
4.2.6	Lithuania	17
4.2.7	Poland	17
4.2.8	Russia	20
4.2.9	Sweden	20
5	Required evidence	21
5.1	Summary	21
5.2	Specific information from:	21
5.2.1	Denmark	21
5.2.2	Estonia	21
5.2.3	Finland	21
5.2.4	Germany	22
5.2.5	Latvia	22
5.2.6	Lithuania	22
5.2.7	Poland	22
5.2.8	Russia	22

5.2.9	Sweden	23
6	Who can be held liable	23
6.1	Summary	23
6.2	Specific information from:	23
6.2.1	Denmark	23
6.2.2	Estonia	23
6.2.3	Finland	24
6.2.4	Germany	24
6.2.5	Latvia	25
6.2.6	Lithuania	25
6.2.7	Poland	25
6.2.8	Russia	25
6.2.9	Sweden	25
7	Penalties	26
7.1	Summary	26
7.2	Specific information from:	26
7.2.1	Denmark	26
7.2.2	Estonia	26
7.2.3	Finland	27
7.2.4	Germany	27
7.2.5	Latvia	28
7.2.6	Lithuania	28
7.2.7	Poland	29
7.2.8	Russia	30
7.2.9	Sweden	31
8	Statutory period of limitation	31
8.1	Summary	31
8.2	Specific information from:	31
8.2.1	Denmark	31
8.2.2	Estonia	31

8.2.3	Finland	31
8.2.4	Germany	32
8.2.5	Latvia	32
8.2.6	Lithuania	32
8.2.7	Poland	32
8.2.8	Russia	32
8.2.9	Sweden	32
Reference list of national acts and regulations		33
A	FINLAND	33
	List of acts	33
B	GERMANY	33
	Extract from the UNCLOS Implementation Act	33
	Extract from the MARPOL Implementation Act	33
	Extract from the German Penal Code	33
C	POLAND	34
	Act concerning the maritime areas of the Polish Republic and the marine administration, 21 March 1991	34
	Act of 16th March 1995 on the prevention of pollution of the sea from ships	35
D	SWEDEN	45
	Law (1980:424) concerning measures for the prevention of pollution from ships	45
	Regulations and General Guidelines issued by the Swedish Coast Guard concerning Water Pollution Fee (issued 27 April 1995)	47
Annex		
	HELCOM Recommendation 19/14 A Harmonized System of Fines in Case a Ship Violates Anti-pollution Regulations	55
List of Baltic Sea Environment Proceedings (BSEP)		61

Preface

The First Informal Meeting of the Sub-project Team 3 on legal matters (Sub-Project Team 3) of the HELCOM Project Team on the Follow-up of the Baltic Strategy (Hamburg, Germany, 25-26 June 1996) decided that the final outcome of the work of the Sub-project Team 3 should be a comprehensive compilation of information on anti-pollution regulations at sea and prosecution of violations thereof in the Baltic Sea States. This information would constitute the Baltic Legal Manual (the Manual) specifying the requirements in each Baltic Sea State for a conviction in cases of violations of anti-pollution regulations as foreseen in HELCOM Recommendation 16/1 "Strengthening the Cooperation in Investigation of Violations of Anti-pollution Regulations and on Bringing Evidence to Court".¹⁾ The Second Informal Meeting of Sub-project Team 3 (Warsaw, Poland, 4-6 February 1997) discussed the elaboration of the Manual on the basis of the received national information.

At the Second Meeting of Competent Authorities Being in Charge of Conducting Investigations of Anti-pollution Regulations (Hamburg, Germany, 5-7 May 1999) a draft Baltic Legal Manual was considered. It was decided that, upon the receipt of additional and corrected information from the Contracting Parties, the Manual should be submitted for adoption by the 25th Meeting of the Maritime Committee (Norrköping, Sweden, 22-24 November 1999).

With reference to a decision by the 22nd Meeting of the Combatting Committee (CC 22/98, Paragraph 5.5), parts of the information of this Manual are presented in a more concentrated and schematic way in the "Guidelines on Ensuring Successful Convictions of Offenders of Anti-pollution Regulations at Sea" (the Guidelines). The draft Guidelines were also considered at the Second Meeting of Competent Authorities Being in Charge of Conducting Investigations of Anti-pollution Regulations. It was decided to submit these Guidelines for adoption both to the 25th Meeting of the Maritime Committee and to the 23rd Meeting of the Combatting Committee (Norrköping, Sweden, on 22-24 and 24-26 November 1999, respectively).

After adoption by the above-mentioned meetings of the Maritime and the Combatting Committees this Manual was adopted by the First Meeting of the Heads of Delegation to HELCOM on 7-8 December 1999 as an official HELCOM document.

It is the hope that this Manual will show useful for lawyers, prosecutors and others who are dealing with prosecution of violations of anti-pollution regulations at sea in the Baltic Sea Area.

¹⁾ HELCOM Recommendation 19/16 "Co-operation in Investigating Violations or Suspected Violations of Discharge and Related Regulations for Ships, Dumping and Incineration" supersedes HELCOM Recommendation 16/1, except for the resolution "to develop a Manual specifying the requirements for a conviction in cases of violations of anti-pollution regulations in the various Contracting States.", i.e., the Baltic Legal Manual.

Compilation of information on anti-pollution regulations at sea and the prosecution of violations thereof in the Baltic Sea States

1 Environmental enforcement jurisdiction within the Baltic Sea Area

1.1 Summary

1.1.1 Breadth of territorial seas and establishments of exclusive economic zones

All the Baltic Sea States have a territorial sea the breadth of which is up to 12 nautical miles measured from the baseline, in most cases the low-water line along the coast. Apart from Finland, all Baltic Sea States have established an exclusive economic zone (EEZ), the breadth of which is up to 200 nautical miles measured from the baselines from which the breadth of the territorial sea is measured. Finland is currently in the process of preparing the establishment of an EEZ.

1.1.2 Rights and duties of enforcement

The Baltic Sea States have the right and - if not forwarding the specifics of a case to the Administration of a flag State - the duty, pursuant to international law, to prosecute violations of anti-pollution regulations up to 200 nautical miles from the baselines, i.e., in their internal waters, territorial seas and exclusive economic zones. As regards ships flying their own flag the Baltic Sea States also have the duty to enforce violations on the high seas.

In addition to these enforcement powers Germany has implemented Article 218 of the United Nations Convention on the Law of the Sea (UNCLOS) giving a port State the right to investigate and institute proceedings, when a ship is voluntarily within its ports, irrespective of where an illegal discharge has taken place, i.e., on the high seas or in the internal waters/ territorial sea/exclusive economic zone of another Baltic Sea State. Although in the latter case conditioned on a request to act from the State concerned.

1.1.3 Application of anti-pollution regulations to all ships, irrespective of flag

The Baltic Sea States do not discriminate between ships sailing different flags, but apply their anti-pollution regulations equally to all ships committing a violation in the internal waters, territorial seas or exclusive economic zones.

1.2 Specific information from:

1.2.1 Denmark

Denmark established an exclusive economic zone on 1 July 1996. In case of infringements of the Danish Act for the Protection of the Marine Environment in this zone, Denmark shall enforce anti-pollution regulations as laid down in the act (which is based on the regulations of the MARPOL Convention) as far as they are in line with international law towards both the

Contracting Parties to the convention irrespective of their nationality and to the Non-contracting Parties.

In Denmark there is a possibility to carry out investigations and to impose a fine in case a ship violated anti-pollution regulations in another Baltic Sea State upon request from that state, if the infringement is a violation of international regulations for the protection or the prevention of pollution of the marine environment, which have been implemented in Danish law.

In case of alleged illegal discharges by foreign vessels a report is usually forwarded to the flag state. This is due to the fact that time does not allow prosecutions to be finished while the ship is in waters under Danish jurisdiction. Furthermore prosecution of a master in another country is often troublesome due to distances and differences in language. A practical example are the problems encountered in the service of writs and the questioning of master and crew living abroad.

1.2.2 Estonia

The restrictions on discharges from ships apply to all vessels, regardless of flag, sailing in Estonian waters.

1.2.3 Finland

In Finland, marine protection is regulated by the Act on the Protection of the Sea, the Water Act and the Act on the Prevention of Pollution from Ships. The Act on the Protection of the Sea contains a prohibition against marine pollution, which governs the areas outside the Finnish territorial sea. The Water Act contains a prohibition against pollution applicable within Finnish territorial sea. The Act on the Prevention of Pollution from Ships regulates waste and oil discharges resulting from the normal operations of vessels, as well as the response to oil pollution incidents. The Decree on the Prevention of Pollution from Ships contains more detailed provisions.

By virtue of the above-mentioned acts, the supervisory authorities may intervene in activities causing marine pollution by coercive administrative means. The responsibility for general supervision of compliance with the Act on the Protection of the Sea rests with the Ministry of the Environment. The Ministry of the Environment may, by threatening to enforce a fine or to order any necessary measures to be carried out at the defaulter's expense, obligate any party who fails to comply with the provisions of the Act on the Protection of the Sea or acts in a manner contrary to the provisions to remove the unlawful state or omission within a specified period of time. The responsibility for supervision of compliance with the Act on the Prevention of Pollution from Ships in turn rests with the Finnish Environment Institute and the Regional Environment Centres. The task of the Finnish Maritime Administration is to restrict the movement of vessels in Finnish waters whenever such restriction is necessary in order to avoid an evident risk of water pollution. The responsibility for general supervision of compliance with the Water Act rests with the Regional Environment Centres, which may take measures to rectify unlawful situations, whenever necessary.

In addition to the provisions on environmental offences made in Chapter 48 of the Penal Code, penal provisions related to marine protection are included in the Water Act and the Act on the Prevention of Pollution from Ships. The Penal Code is applicable to more severe environmental offences. A penalty for an environmental offence shall be imposed on the person, whose duties the act or omission violates. Sanctions against environmental offences range from a fine to six years imprisonment. It is also possible to impose a corporate fine upon an organisation, where a member of its management has been found guilty of an offence. In addition to the above-

mentioned sanctions, another possible sanction is confiscation, i.e. declaring the proceeds or instrumentalities of an offence forfeit to the State. The penal provisions govern both Finnish and foreign vessels, provided that the offence has been committed within Finnish territory or within Finnish territorial sea.

1.2.4 Germany

According to §324 Strafgesetzbuch (StGB), the German Penal Code, anybody who, wilfully or negligently, pollutes water or otherwise detrimentally changes its properties without authorization shall be prosecuted. § 324 StGB, on the basis of the legal definition of the term "water", protects not only the underground water and all surface waters within the jurisdiction of the Federal Republic of Germany including the territorial sea, but also the high seas and foreign coastal waters, although only insofar as the offence is committed by a German or by a foreigner on board a ship flying the German flag. Foreigners on board a ship not flying the German flag, can be prosecuted if the offence was committed in waters under German jurisdiction (internal waters and territorial sea) or within the German exclusive economic zone.

The possibility of prosecuting criminal offences against MARPOL discharge regulations has even been extended to the whole Baltic Sea area by Article 12 of the UNCLOS Implementation Act.

According to Article 12 German law shall apply to criminal offences to the detriment of the environment in cases referred to in Sections 324, 326, 330 and 330bis of the German Penal Code, when committed from a vessel in the Baltic Sea outside the German exclusive economic zone by the discharge of substances resulting in violation of administrative-legal obligations (Section 330, Items 4 and 5, of the German Penal Code) serving the purpose of implementing conventions for the protection of the sea binding under international law. In cases where such offence has been committed in the territorial sea of another State, the provisions of the foregoing sentence shall apply when such an offence is punishable under the laws and regulations of that State.

The expansion of the scope of application of German penal law, beyond the present scope as defined in Section 5 (Item 11) and Section 7 (2) (Item 2) of the German Penal Code, is provided for in cases of certain types of criminal offences to the detriment of the marine environment, when committed by a foreigner from a foreign-flag ship in the Baltic Sea. Thereby, this regulation embodies the so-called "port State principle", newly introduced into international law by the provisions of UNCLOS Article 218, entitled "Enforcement by port States;" this principle authorizes the Contracting States - certain preconditions prevailing - to institute proceedings in respect of criminal offences to the detriment of the marine environment that have been committed from a foreign-flag ship. This authority is being used to the extent of covering criminal offences committed in the Baltic Sea.

Article 12 covers only offences committed in the North Sea or the Baltic Sea outside the German exclusive economic zone. When an offence has been committed within the German exclusive economic zone, the provisions of Section 5 (Item 11) of the German Penal Code are relevant. The provisions of Sections 4 and 7 (2) (Item 1) of the German Penal Code continue to apply to offences committed by a foreigner on board a German-flag ship or by a German on board a foreign-flag ship. When an offence of the kind under consideration has been committed in the territory of another State, German jurisdiction may not be exercised unless the offence in question is punishable in that State, too.

The preconditions set out in Article 218 of the UN Convention on the Law of the Sea, 1982, contain certain limitations to the application of Article 12 of the UNCLOS Implementation Act. This is why Article 12 is limited to cases of discharge of substances from foreign-flag ships. The

institution of criminal proceedings is made dependent upon a violation of the "applicable international rules and standards established through the competent international organization or general diplomatic conference", as Article 218 says; accordingly, expansion of the application of German penal law is limited to criminal offences to the detriment of the environment, which violate the administrative-legal obligations (Section 330quinter (Items 4 and 5) of the German Penal Code) serving the purpose of implementing conventions for the protection of the sea binding under international law. Moreover, the additional preconditions for instituting criminal proceedings, referred to in UNCLOS Articles 218 (1) and (2) and 228, must be observed.

In addition to the Penal Code, breaches of the discharge provisions of MARPOL 73/78 are also breaches of administrative regulations and fall under the jurisdiction of German authorities if the violation was committed by a German or by a foreigner on board a German ship. If the offender is a foreigner on board a ship not flying the German flag, he can be prosecuted by German administration if the violation was committed in the German exclusive economic zone, territorial sea or in that part of the internal waters in which MARPOL 73/78 is applicable.

The possibility of imposing administrative fines is an important feature of the German legal system.

As in other countries, cases which are not liable to prosecution in Germany as flag State, coastal State or port State are passed to the flag State.

1.2.5 Latvia

Fines can be imposed on ships dependent on their nationality, both on contracting and non-contracting parties to MARPOL 73/78 and HELCOM 74/92.

The Administrative Code, paragraph 82, provides that the penalty is imposed in the case of violations of antipollution regulations within Latvia's economic zone, territorial sea and internal waters, and in sea ports.

1.2.6 Lithuania

Requirements for prosecution of contraventions committed in the territorial sea and exclusive economic zone are the same for ships of all flags, irrespective of whether they fly the flag of Lithuania or other State being or not a Contracting Party to the Helsinki Convention, MARPOL 73/78.

1.2.7 Poland

The Act of March 16th 1995 on Prevention of Pollution of the Sea from Ships concerns

- all vessels present in Polish marine areas (internal waters, territorial sea and exclusive economic zone),
- vessels flying Polish flag outside Polish marine areas.

1.2.8 Russia

All ships in the Russian territorial sea, as well as in the exclusive economic zone of Russia, are obligated to implement the national regulations of Russia for prevention of pollution from ships.

Requirements for prosecution of contraventions by ships flying the flag of the Contracting Parties to MARPOL 73/78 and/or Helsinki Convention as well as ships flying the flag of Non-Contracting Parties are the same.

1.2.9 Sweden

The Act (SFS 1980:424) concerning measures for the prevention of pollution from ships applies to all vessels within Swedish territorial sea and exclusive economic zone.

An unlawful oil discharge or discharge of other harmful substances will rise a penalty for environmental crime or liability for environmental damage to the vessel and the responsible person on board.

2 Implementation by the Baltic Sea States of MARPOL 73/78 and the Helsinki Convention

2.1 Summary

The International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78), and the Convention on the Protection of the Marine Environment of the Baltic Sea Area, 1974/1992 (the Helsinki Convention) form the basis for the marine environmental legislation in the Baltic Sea Area, to be implemented through national legislation. (The 1992 Helsinki Convention entered into force on 17 January 2000, from which date the 1974 Helsinki Convention ceased to apply.)

The acts, codes etc. of the Baltic Sea States ensuring national implementation of the regulations of MARPOL 73/78 and the Helsinki Convention are listed below. More detailed information on some of these acts can be found in the "Reference list of national acts and regulations".

2.2 Specific information from:

2.2.1 Denmark

The Danish Act for the Protection of the Marine Environment of 1980 as amended in 1993, contains the main anti-pollution regulations concerning the sea. The Act is based on the regulations of the MARPOL Convention 1973/78 and the Helsinki Convention (as regards regulations of the Baltic Sea Area). The obligation to keep an Oil, Garbage and Cargo Record Book is regulated in the Danish Act for Safety of Sea.

2.2.2 Estonia

Water Act
Code of Administrative Offences
Pollution Charge Law
Ports Act

2.2.3 Finland

MARPOL 73/78 and the Annex IV to the Helsinki Convention were brought into force in Finland by the Act on the Prevention of Pollution from Ships. The London Dumping Convention, Annex V to the Helsinki Convention and Annex VI to the Helsinki Convention, 1992 were brought into force in Finland by the Act on the Protection of the Sea.

The Act on the Protection of the Sea contains a prohibition against pollution, which governs the high seas outside the area of territorial sea, as well as the territorial sea of another state. Thus the scope of application of the act goes beyond national frontiers and also governs international seas. According to the Act on the Protection of the Sea, acts causing marine pollution are considered to include the activities of a Finnish vessel, corporation or citizen, which introduce, directly or indirectly, substances or energy into the sea, which are liable to create hazards to human health, to harm living resources or marine ecosystems, to cause hindrance to fishing or other legitimate uses of the sea, to impair the possibilities for use of the sea, to lead to a reduction of amenities, or to cause other comparable harm. However, outside the territorial sea, such action may be undertaken, the effects of which extend to the territorial sea or exclusive economic zone of another state, provided that permission for this has been granted by an authority of the state concerned.

With respect to Finnish territorial sea, the Water Act and its prohibition against pollution are applicable. According to the Water Act, an action, which may result in marine pollution outside the area of Finnish territorial sea, shall not be undertaken within Finnish territory, inland waters or territorial sea. By virtue of the Water Act, however, permission for activities causing pollution may be granted, subject to the fulfilment of the conditions of such permission as defined by the act. Notwithstanding, permission for such activities may not be granted by virtue of the Water Act, if these activities cause pollution outside the territorial sea.

Marine protection also involves the Act on the Prevention of Pollution from Ships. The act regulates the discharge of waste and oil from vessels, as well as the response to oil pollution incidents. In the act, pollution of water means a hazard to human health, harm to living resources and aquatic ecosystems, hindrance to fishing or other legitimate uses of waters, impairment of the quality for use of water, reduction of amenities, or other comparable harm, which are related to the condition of waters.

By virtue of the Act on the Protection of the Sea, the Water Act and the Act on the Prevention of Pollution from Ships, the supervisory authorities may intervene in activities causing marine pollution by coercive means. In addition to coercive administrative means, the goals of marine protection may be promoted through penal sanctions. In Finland, the environment as a whole enjoys the protection of criminal law. The penal provisions previously included in various environmental acts, which may be punishable by deprivation of liberty, are now incorporated in Chapter 48 of the Penal Code. The penal provisions entailing a fine are still included in the environmental acts. In addition to Chapter 48 of the Penal Code, penal provisions related to marine protection are included in the Water Act and the Act on the Prevention of Pollution from Ships. A kind of basic form of environmental offence in Chapter 48 of the Penal Code is the offence of damage to the environment, which covers all incidents of environmental pollution caused wilfully or through gross negligence. The environmental damage offence may be divided into a serious and a petty form. The negligent form of the offence in turn covers damage to the environment caused by slight negligence or carelessness.

The Finnish penal legislation is applicable to offences committed in Finland. If an offence has been committed on the high seas or within a territory or territorial sea belonging to no particular state, Finnish law shall apply, provided that the offence was committed on a Finnish vessel.

2.2.4 Germany

- 1) Penal Code: § 324
- 2) Administrative regulations: In addition to the Penal Code, breaches of the discharge provisions of MARPOL 73/78 and the Helsinki Convention are also breaches of administrative regulations under the jurisdiction of German authorities if the violation was committed on board a German ship. If the offender is on board a ship not flying the German flag, he can be prosecuted by German administration if the violation was committed in the German exclusive economic zone, the territorial sea or in the part of the internal waters on which MARPOL 73/78 is applicable.

Violations of the duty to keep the Oil, Cargo and Garbage Record Book properly, constitute administrative offences

Since January 1999 administrative fines can be imposed if – in contravention of Regulation 17 Paragraph 3 of Annex I of MARPOL – sludge tanks have a direct connection overboard other than the standard discharge connection.

For the above mentioned violations of regulations of the MARPOL-Convention the applicable German law is the MARPOL-Ordnungswidrigkeitsverordnung (ordinance on MARPOL offences).

2.2.5 Latvia

- 1) Law on natural resources tax 1991;
- 2) The Administrative Code chapter "On imposing penalty in cases of violations of environmental protection regulations";
- 3) The Marine Code (1994), Chapter 5;
- 4) Regulations elaborated by the Maritime Department concerning the foreign ships (Convention on Intervention).

All legal actions with respect to the enforcement of antipollution regulations are fixed in the Administrative Code of administration offence of the Republic of Latvia.

2.2.6 Lithuania

Act of Seimas (Parliament) of Lithuania:

- a) Administrative Law Violation Code of Republic of Lithuania, April 21, 1994.
- b) Penal Code of Republic of Lithuania, November 28, 1994 with later amendments. Illegal discharge of waste water or garbage and violation of the obligation to keep properly an oil or cargo book are treated as a criminal offence under the Penal or Administrative Codes of the Republic of Lithuania.
- c) Statute of the Klaipeda State Sea Port of Republic of Lithuania, May 16, 1996.
- d) Inner Water Transport Code of Republic of Lithuania, September 24, 1996.

Other legal acts:

- a) Recommendation on the Methodology of the Calculation of Damages to the Nature according to the Environmental Protection Law, 1992.
- b) Klaipeda State Sea Port, Regulations on Navigation, July 13, 1993.

2.2.7 Poland

In Poland, responsibility for violation of laws and regulations on protection of marine environment is provided in:

- 1) the Act of March 21, 1991 On Marine Areas of the Republic of Poland and On Maritime Administration,
- 2) the Act of March 16th 1995 on Prevention of Pollution of the Sea from Ships.

The Act of March 21, 1991 on Marine Areas considers wilful pollution of the sea by a foreign vessel as a violation of the right of innocent passage through the Polish territorial sea (like the UNCLOS).

The Act of March 16th 1995 on Prevention of Pollution of the Sea from Ships regulates in detail the control measures, inquiries and responsibility for polluting marine environment.

This Act enforces:

- 1) International Convention for the Prevention of Pollution from Ships, MARPOL 73/78,
 - 2) Convention on the Protection of the Marine Environment of the Baltic Sea Area, 1974,
 - 3) Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters, 1972.
- Some provisions of the Part II of the Convention on the Law of the Sea are also reflected by this Act.

2.2.8 Russia

The national authority for implementation of MARPOL 73/78 requirements is the Department of Maritime Transport of the Ministry of Transport of the Russian Federation as the Maritime Administration.

The Ministry for Environment Protection and Natural Resources is responsible for implementation of the Helsinki Convention.

General national regulations concerning the enforcement of MARPOL 73/78 and the Helsinki Convention have been elaborated and revised in accordance with amendments to the Conventions. In 1994 Russia revised the Instruction for Prevention of Pollution from Ships and Regulations on the registration of operations with oil, oil products and other substances harmful to human health and to the marine environment, and their mixtures produced on ships and other floating means.

In the Regulations on the registration of operations with oil, Russia implemented the Guidelines for preventing the introduction of unwanted aquatic organisms and pathogens from ship's ballast water and sediment discharges, which has been adopted by IMO Resolution A.774(18).

The basic environmental law in Russia is the Law on Protection of the Natural Environment, adopted in 1991, which establishes national antipollution requirements, and guarantees ecological safety on the territory of the Russian Federation.

1. The Law on the Continental Shelf, 1995;
2. Instruction for Prevention of Pollution from Ships;
3. Regulation on the registration of operations with oil, oil products and other substances harmful to human health and to the marine environment, and their mixtures produced on ships and other floating means;

4. The Administrative Code of the Russian Federation (article 57 "Violations of regulations on protection of water resources", article 58 "Violations of the obligation of registration of operations with harmful substances and their mixtures") as amended 1996;
5. Penal acts.

2.2.9 Sweden

The main Swedish rules concerning the enforcement of MARPOL 73/78 and the Helsinki Convention can be found in the Act (1980:424) concerning measures for the prevention of pollution from ships, the Ordinance (1980:789) concerning measures for the prevention of pollution from ships and the Decree by the National Maritime Administration (SJÖFS 1985: 19) with regulations concerning measures for the prevention of water pollution from ships.

All of these three regulations contain, in different extent of detail, binding rules concerning: prohibition of water pollution from ships, reception of contaminated ballast and tank washing water from ships, ship construction, supervision and other measures for the prevention or limitation of water pollution from ships.

Harmful substances are defined as oil and other substances which, if they are discharged into the sea or any other water area, can pose a risk to the health of people, be noxious to the marine fauna or flora, be detrimental to aesthetic or recreation values or disturb other legitimate uses of the sea or other water areas. Within this definition fall, in addition to oil, also noxious liquid substances in bulk, harmful substances in packaged forms, sewage and garbage.

3 Practices of the Baltic Sea States in enforcing anti-pollution regulations

3.1 Summary

The Baltic Sea States have decided on a harmonised interpretation and thereby implementation of the anti-pollution regulations by establishing criteria for determining the severity of a violation and the minimum level of the fine to be imposed (cf. HELCOM Recommendation 19/14 "A Harmonized System of Fines in Case a Ship Violates Anti-pollution Regulations", a copy of which can be found in the Annex). In accordance herewith violations of the duty to keep the Oil and Cargo Record Books are regarded as a continuing offence. This means that even if the duty to make entries in the appropriate record book arose on the high seas, it can be enforced in a port of a Baltic Sea State. Furthermore, amongst other things, a minimum level of fine has been recommended in case of missing entries in the Oil Record Book on the quantity of sludge. Lithuania has further quantified this on national level by stating that in case heavy fuel oils are used in ship's engines at least 1% of non-combustible oil residues, i.e., sludge, will occur, and the treatment and whereabouts of this has to be recorded in the Oil Record Book.

3.2 Specific information from:

3.2.1 Germany

For ships flying the flag of a Contracting Party to MARPOL 73/78 or the Helsinki Convention, the duty to keep the Oil, Cargo or Garbage Record Book only ends in the port of the controlling Contracting Party, which means that by calling at a German port the contravention has been committed within German jurisdiction, even if the duty to make registrations should already have been fulfilled immediately on the high seas.

According to jurisdiction of the competent Hamburg courts, violations of the duty to keep the Oil, Cargo or Garbage Record Book properly constitute continuing offences. The offence begins when no proper entry is made on the high seas, and ends in the German territorial seas because the persons held liable (master and engineer) are capable of recording operations subsequently in the Oil Record Book on the basis of notes and documents kept on board. This is in accordance with HELCOM Recommendation 19/14.

The wording in Regulation 20, para 4, sentence 1 of Annex I of MARPOL 73/78, which says that operations have to be recorded without delay does not imply that there is no legal duty to record operations at a later time if an immediate entry has not been made.

The following applies to ships from non-contracting parties:

Ships flying the flag of a State which is not a Party to MARPOL 73/78, Annex I, which, coming from sea waters outside the boundaries of the German territorial sea, are approaching the internal waters of the Federal Republic of Germany, are obligated to carry an Oil Record Book in compliance with the MARPOL Convention and to keep complete records covering at least the period between arrival at the preceding port of call and leaving of territorial sea and exclusive economic zone of the Federal Republic of Germany.

3.2.2 Lithuania

For ship flying the flag of a Contracting Party to MARPOL 73/78 or the Helsinki Convention, the duty to keep the Oil Record Book only ends in the port of the Contracting Party, which means that by calling at a Lithuanian port the contravention has been committed within Lithuanian jurisdiction, even if the duty to make registrations should already have been fulfilled immediately on the high sea.

If heavy fuel oil is used for ship's engines at least 1% of non-combustible residues will occur and there have to be entries in the Oil Record Book about the treatment and final whereabouts of such sludge.

Ships flying the flag of a State which is not a Contracting Party to MARPOL 73/78 or the Helsinki Convention are obliged to keep the Oil Record Book as stated in the laws of the flag State. Only if the laws stipulate a duty to keep the Oil Record Book properly filled-in, will the lack of registrations constitute a violation.

This applies also to the Cargo Record Book.

4 Investigation and Prosecution

4.1 Summary

Investigations of (suspected) violations of anti-pollution regulations are carried out by different authorities in the Baltic Sea States. Some States have charged specific Boards with this task. Common for most of the States is the co-operation between a multitude of authorities.

Violations of anti-pollution regulations fall under two different categories; administrative offences, and/or criminal offences (based on civil or penal law).

Apart from Finland and Denmark competent authorities in the Baltic Sea States can impose administrative fines for specified violations of anti-pollution regulations.

In case of court proceedings the venue is decided, *inter alia*, on the basis of the place of the offence, place of residence of the defendant or the suspect. In addition, Finland and Germany have centralized the competence at specific courts in case of (suspected) violations outside the territorial seas. Various authorities can impose an administrative fine.

4.2 Specific information from:

4.2.1 Denmark

A possible illegal discharge is treated as a criminal offence under the Danish Act for the Protection of the Marine Environment. It is reported to the Prosecution by the Ministry of Defence.

Violation of the obligation to keep an Oil, Garbage and Cargo Record Book is treated as a criminal offence under the Danish Act for Safety at Sea. It is reported to the Prosecution by the Danish Maritime Authority.

The venue of a possible case is the domicile of either the master, crew members or the owner.

There is a possibility of appealing to a higher court.

For the time being there is no administrative enforcement procedure in the Danish system regarding cases of violations of anti-pollution regulations but the Danish Government has for some time been focussing strongly on instruments to strengthen the enforcement of rules to prevent oil pollution from vessels in particular.

Further, the Danish Folketing (Parliament) supports the Government's wish to strengthen efforts in this field. In June 1998 the Parliamentary Environment and Planning Committee submitted a report on oil pollution in Danish waters – calling for more strict enforcement tools.

In recent years monitoring of the marine environment has been strengthened by a number of targeted measures. The Danish Minister for Environment and Energy Svend Auken has therefore presented a Bill to the Folketing, aiming at following up the intensified monitoring by stricter enforcement. The first reading in Parliament is completed, and the Bill will be debated in two further readings before adoption, presumably within the next six months.

The Bill provides for more potent enforcement instruments by extending the administrative authority to detain vessels, by introducing the possibility to close a case by administrative fines, and, finally, by proposing a considerably higher level of fines.

The aim of the Bill is to give the authorities a range of instruments allowing more efficient sanctions for violation of rules to prevent marine pollution. First, in evident cases the authorities need not submit the matter to the lengthy courts system. Secondly, the authorities may retain the offenders, requiring them to provide security for the fines, thus ensuring that the fines are actually paid when the criminal liability of the offender has been established, also in cases where the vessel is at this moment far away.

The administrative fines system and the power to detain vessels in connection with provision of security also apply to failure to keep the Oil, Cargo and Garbage Record Books or to insufficient entries in these books.

To close the matter with administrative fines, the offender shall plead guilty of the offence and approve that the matter be settled administratively with a specified fine. If this is not the case, the matter shall be brought before the court.

Finally, it is proposed to raise the level of fines – based on the quantities discharged. The guiding level proposed in the Bill is DKK 25,000 for discharges of approx. 500 litres of oil, DKK 50,000 for discharges of approx. 1,000 litres of oil, and DKK 100,000 for discharges of approx. 10,000 litres of oil.

As regards Oil, Cargo and Garbage Record Books DKK 5,000 is proposed in cases where the Oil Record Book has not been kept for one month, or entries are missing for oil waste of approx. one tonne. Where the books have not been filled in properly for a long period, or where considerable quantities are involved, a higher level of fines is proposed, however in principle not exceeding DKK 10,000.

4.2.2 Estonia

The Estonian Environmental Inspectorate is the national authority in charge of conducting investigations in case of violation of anti-pollution regulations. The inspector of the Estonian Environmental Inspectorate has the right to inspect a ship when it is in port or at anchor in Estonian waters, also a ship in voyage if it is suspected as polluter.

The inspector has the right to take samples on board a ship and to interrupt the ship's voyage for the time needed to take this sample, in order to verify the origin of oil or any harmful substance found in sea surface.

Amounts of the pollution charge which are not paid during the term for payment thereof shall be collected from the polluter pursuant to the procedure provided for in the Code of Civil Procedure.

Prior to the commencement of civil proceedings for the collection of the pollution charge not paid during the term for payment thereof and in order to collect the pollution charge pre-trial, the authorised state agency is required to send a reminder to the polluter to pay the pollution charge within ten days.

The head of a corresponding environmental authority or a person authorised by him or her is the representative of the state in the collection of the pollution charge by way of civil procedure.

4.2.3 Finland

The responsibility for the general supervision of compliance with the Act on the Protection of the Sea rests with the Ministry of the Environment. The Ministry of the Environment shall keep records of the nature and quantities of dredged material dumped legally outside the Finnish territorial sea and waste or other matter dumped in the sea under a permit, as well as the location, time and method of dumping. The Ministry of the Environment may, by threatening to enforce a fine, obligate any party who fails to comply with the provisions of the Act on the Protection of the Sea or acts in a manner contrary to the provisions to remove the unlawful state or omission within a specified period of time. In lieu of a fine imposed conditionally, the Ministry of the Environment may also impose a threat to order any necessary measures to be carried out at the defaulter's expense.

The responsibility for supervision of compliance with the Act on the Prevention of Pollution from Ships rests with the Finnish Environment Institute and the Regional Environment Centres. The task of the Finnish Maritime Administration is to restrict the movement of vessels in Finnish waters whenever such restriction is necessary in order to avoid an evident risk of water pollution caused by weather or ice conditions, the condition of vessels or their large size in proportion to the waters. A maritime inspector is entitled to inspect a vessel whenever it is in port or at anchor in Finnish waters. Moreover, a maritime inspector may prohibit a vessel from sailing or may interrupt its journey if it is necessary to restrict the movement of the vessel or if a law has been seriously violated on board the vessel. A maritime inspector and a coastguard or police officer has the right to take samples from a vessel in order to establish the origins of oil or other harmful substances discovered in the water and, where necessary, interrupt the vessel's journey for this purpose. If a vessel sinks, runs aground, suffers a leakage or engine failure, or otherwise falls into a condition involving a risk of water pollution when it is in Finnish waters, the Finnish Environment Institute may order salvage and other measures to be taken. The Finnish Environment Institute decides on the implementation of response measures and appoints the commander of response measures in the event of an oil pollution incident on a vessel or an imminent risk thereof on the open sea.

The responsibility for general supervision of compliance with the Water Act rests with the Regional Environment Centres. If a supervisory authority discovers a failure to comply with the provisions of the act, the authority shall, if public interest so requires or if informed by a party concerned, notify a public prosecutor thereof, or take other action to rectify what has been unlawfully committed or neglected. Upon request of a supervisory authority or a party concerned, a water court may, by threatening to enforce a fine or to order any necessary measures to be carried out at the defaulter's expense, order rectification of what has been unlawfully committed or neglected. A supervisory authority or another party concerned may be entitled to carry out any necessary measures.

The Act on the Protection of the Sea, the Act on the Prevention of Pollution from Ships and the Water Act contain penal provisions, according to which Chapter 48 of the Penal Code governing environmental offences shall be applicable to activities contrary to these acts. With regard to environmental offences, a public prosecutor has the right to institute criminal proceedings. However, the investigation of a criminal case in Finland is subject to an order for prosecution by the Prosecutor General where a foreign national has committed an offence on a foreign vessel at a time when the vessel was in Finnish territorial sea, provided that the offence was not against Finland, a Finnish citizen, a foreign national permanently residing in Finland, or a Finnish corporation, foundation or other legal person. The Water Act and the Act on the Prevention of Pollution from Ships also contain penal provisions of their own. The provisions govern minor acts and omissions, which are only punishable by a fine. Violation of antipollution regulations on a vessel provided by the Act on the Prevention of Pollution from Ships is subject to public prosecution. Of the penal provisions in Chapter 13 of the Water Act, those with significance to marine protection mainly include the permit infringement under the Water Act and the omission

of the duty of notification governing industrial effluent under Chapter 1, Section 23 of the Water Act. With regard to the permit infringement, the law provides that a public prosecutor may not prosecute an act, which has only violated a private interest or right, unless the injured party reports it for prosecution.

A public prosecutor may waive prosecution, provided that the offence is not punishable by a penalty more severe than a fine and that, assessed as a whole, it must be deemed to be minor, considering the degree of harm resulting therefrom or the guilt of the offender demonstrated thereby. Charges for an offence, which a party has committed when under 18 years of age, may also be waived, provided that the offence is not punishable by a penalty more severe than a fine or a maximum of six months imprisonment and is deemed to have resulted from a lack of judgement or consideration, rather than from wilful disregard of the prohibitions and precepts of law.

Unless a substantial public or private interest otherwise requires, a public prosecutor may likewise waive prosecution where court proceedings and a penalty must be deemed to be unreasonable or pointless in view of a settlement reached between the offender and the injured party or other activities by the offender to prevent or remove the effects of his offence, his personal conditions, other consequences caused to him by the offence, social and health care measures, or other considerations. Charges may also be waived where the offence would not have a significant effect on the total penalty due to provisions governing the imposition of a combined penalty or the consideration of a previous sentence.

Offences subject to public prosecution shall be dealt with before the district court, within the jurisdiction of which the offence has been committed. The offence shall be deemed to have been committed both where the criminal act was perpetrated and where the consequence of the offence occurred, or, if the attempted offence was unsuccessful, where the consequence of a completed offence would have occurred. If the offence was committed in several locations falling within different judicial districts, the court of each locality concerned shall be competent. According to the Act on the Prevention of Pollution from Ships, proceedings may also be instituted in the district court of the locality, in the port of which the vessel concerned first arrives. If the act was committed outside the Finnish territory or territorial sea, proceedings shall be instituted at the District Court of Helsinki. Proceedings concerning a violation of the Act on the Protection of the Sea shall be instituted at the District Court of Helsinki. Charges concerning offences under the Water Act shall be tried before a water court instead of a district court.

4.2.4 Germany

1) Penal law

Competent authority for the investigation is the public prosecutor, assisted by the Federal Customs Administration, the Federal Border Police, the Federal German Navy (aerial surveillance), the Federal Water and Shipping Authority and the Water Police of the coastal Laender.

Competent authority for the prosecution are the courts of the Laender. Which court is competent depends on the place of offence, the place of residence of the defendant, the place of arrest in the event of his being detained, or the home port if the offence was committed by a German ship outside German territory. If no other venue is specified, the Hamburg Courts are in charge of all offences against the environment which have been committed outside German territory in the sea region.

2) Administrative regulations

Competent authority for the investigation as well as for the prosecution of violations of the duty to keep an Oil, Cargo or Garbage Record Book, is the Federal Maritime and Hydrographic Agency in Hamburg. It is also the competent authority for imposing administrative fines in cases of violations of Regulation 17 Paragraph 3 of Annex I to MARPOL 73/78 (illegal pipes). In the investigation of violations it is assisted by the Federal Customs Administration, the Federal Border Police, the Federal German Navy (aerial surveillance), the Federal Water and Shipping Authority and the Water Police of the coastal Laender.

4.2.5 Latvia

The Latvian Marine Environment Board is the national authority in charge of conducting investigations in case of violation of anti-pollution regulations.

On request of a Baltic coastal State, the competent Latvian authorities can carry out investigations, when a ship has violated anti-pollution regulations in the marine areas of that coastal State.

In case of administrative proceedings, it is possible to appeal to court.

4.2.6 Lithuania

The Regional Department of the Lithuanian Republic Environmental Protection Ministry and the Service of the Harbour Master of the Lithuanian Republic Transport Ministry are the main organizations carrying out ecological control functions.

a) Courts - scope of competence

Offences referred to in the Penal Code are tried by public trial. The first instance is the appropriate Circuit Court, the second is The Court of Appeal. The last instance is The Supreme Court. After that the offender can apply to the highest institutions of the Republic of Lithuania. Some administrative fines can be imposed by means of public trial.

b) Other authorities - scope of competence

The State Environmental Inspectors of the Klaipeda, Regional Department of the Ministry of Environmental Protection of Republic of Lithuania may impose fines on the master or other crew-members as well as on any responsible administrative person breaking the Environmental Law.

Suspected persons have the right to proceedings, defence and appeal in court.

4.2.7 Poland

Detection of pollution of marine environment caused by activities on the sea, and of offenders, is performed by the Maritime Inspection, which cooperates with the Border Guard, using its means and resources. If an inspector of the Maritime Inspection is not present on board the vessel of the Border Guard, the Guard can by itself perform activities in the name of the local maritime authority.

The Act of March 16th 1995 provides that the Director of the Maritime Board may:

- 1) with respect to a vessel flying a flag of a State which is a Party to the MARPOL 1973 /78 Convention:
 - a) in port or offshore terminal, perform inspection of the vessel (limited to checking certificates and other documents required by the Convention) and inspect oil and cargo records in order to determine whether harmful substances have been discharged from the vessel against provisions of the Convention;
 - b) refuse a foreign vessel permission to enter port or offshore terminal, or start procedures to ensure that navigation by this vessel will not constitute danger to the marine environment - if the vessel does not comply with the requirements of the Convention;
 - c) refuse a vessel permission to leave port until it is brought to proper technical state, if there are grounds to suspect that the state of the vessel or its equipment differs significantly from the one stated in certificates, or if the vessel does not have valid certificates; however, the Director of the Maritime Board may permit the vessel to leave port in order to go to the nearest repair shipyard.

With respect to vessels flying a foreign State flag which is not a Party to the MARPOL 73/78 Convention, the Director of the Maritime Board may:

- a) inspect the vessel in order to ascertain that the state of the vessel fulfills MARPOL 73/78 requirements; if it is found that these requirements are not fulfilled, and that navigation by that vessel may constitute significant danger to the marine environment, the Director may refuse permission to enter port or offshore terminal;
- b) if the inspection is performed in port or offshore terminal, the Director of the Maritime Board may order that appropriate repairs are made or that the vessel must leave the port or offshore terminal.

Apart of the above, the Director of the Maritime Board may:

- 1) enquire, from a vessel sailing through Polish marine areas, information concerning identification, port of registering, last and next port of call, and any other necessary information if there is a reasonable suspicion that while passing through these areas the vessel has violated regulations of the Act, causing pollution or a danger of pollution,
- 2) perform inspection of a vessel passing through Polish marine areas in the case when:
 - a) there is reasonable suspicion that the vessel has violated regulations of the Act by discharges which result or may result in significant pollution of the sea;
 - b) required information has been refused, or if the information obtained from the vessel is evidently different from the actual state, and circumstances justify such an inspection.

If information is obtained about:

- 1) pollution of the sea by vessels,
 - 2) dumping of sewage or other noxious substances from vessels,
- the Director of the Maritime Board should immediately undertake activities in order to find the offender and to collect evidence.

The Director of the Maritime Board shall start investigations:

- 1) with respect to a vessel flying Polish flag:
 - a) which caused pollution or danger of pollution of the marine environment;
 - b) on application of an authority of any State, if there is a suspicion that regulations of the Act of March 16th 1995 have been violated, and if evidence has been collected,
- 2) with respect to a foreign vessel staying in a Polish port or offshore terminal, which caused pollution or danger of pollution of marine environment in the Polish marine area.

The Director of the Maritime Board is also obliged to carry out an investigation concerning a foreign vessel, staying in a Polish port or offshore terminal, on request of:

- 1) an authority of any State, if it is suspected that the vessel has made a discharge outside the Polish marine area, if the discharge has caused pollution or danger of pollution in the internal waters, territorial sea or exclusive economical zone of the State,
- 2) an authority of a State which is a Party of the MARPOL 1973/78 convention, concerning such a discharge irrespective of location of the discharge.

The Director of the Maritime Board may start an investigation, if evidence is collected, concerning a foreign vessel which:

- 1) is staying in a Polish port or offshore terminal, if it has caused pollution or danger of pollution outside the Polish marine area, violating international law, regulations or standards,
- 2) while sailing in Polish territorial sea caused pollution or danger of pollution of this area,
- 3) while sailing in the Polish exclusive economical zone or territorial sea, through pollution in the exclusive economical zone has caused serious damage or danger of serious damage to the coast or to other significant interests of the State.

The Director of the Maritime Board notifies immediately the proper authority of the State of ship's flag, and of any other concerned State, about the actions and measures undertaken in accordance with the Act of March 16th 1995, and conveys to them relevant documents concerning these actions and measures.

During the proceedings, the Director of the Maritime Board:

- 1) admits evidence submitted by authorities of another State,
- 2) facilitates participation in the proceedings of representatives of competent international organization, State of flag of the vessel, and of any other State afflicted by sea pollution incident.

Within the scope of the Act of March 16th 1995, the Director of the Maritime Board is responsible in matters of international legal assistance.

Fines are imposed by the Director of the Maritime Board. Appeal against the decision on a fine may be made to the Minister of Transport and Maritime Economy. As a decision on fine is an administrative decision, the Supreme Administrative Court is competent for overview on legality of the decision.

4.2.8 Russia

The Service of the Harbour Master of the Ministry of Transport of the Russian Federation carries out the control of the implementation of anti-pollution regulations by ships.

The special regional authorities of the State Committee of the Russian Federation on Environment Protection are the national competent authorities in charge of conducting investigations in case of violations of anti-pollution regulations and which impose penalties for the violations.

The inspector of the special regional authorities collects all practical evidence concerning violation of anti-pollution regulations.

In cases of violations of anti-pollution regulations the special regional authorities of the Ministry for Environmental Protection and Natural Resources (see Part III) draw up a statement including all practical evidence, findings and facts concerning a case gathered by them and by the Port State administration.

In case of differences arising during the investigation and prosecution of a violation, there is a possibility to take this matter to the Court of Arbitration to obtain a final decision.

In cases of violations of anti-pollution regulations which cause serious ecological damage, the special authorities may institute proceedings against the offender.

Fines for violations of anti-pollution regulations can be imposed, in accordance with the national law, by the special regional authorities of the Ministry for Environment Protection and Natural Resources of the Russian Federation.

The court of arbitration is competent for overview on the legality of the administrative decision.

The representatives of the State of flag vessel of the vessel as well as representatives of competent international organizations can participate in the proceedings.

4.2.9 Sweden

Criminal cases concerning violations of the prohibitions of water pollution from ships are handled by competent district courts. Ordinary rules of procedure are applicable.

Competent authority to charge water pollution fees is the Swedish Coast Guard. Such a decision may be appealed to a district court.

The investigation procedure of unlawful discharges is conducted in co-operation between the Coast Guard officers and police authority and as soon as the illegal discharge may be reasonable suspected to originate from one or more specifically identified vessels, the prosecutor has a co-ordinating responsibility for the conduct of the investigations.

5 Required evidence

5.1 Summary

There are no formal requirements in the legislations of the Baltic Sea States requiring specific evidence to be submitted to convict an offender who has violated anti-pollution regulations. Nor are there any formal rules on how to evaluate collected evidence.

5.2 Specific information from:

5.2.1 Denmark

The legal liability is mainly based on *culpa*. The prosecutor has to prove that the presumed polluter is liable for the infringement due to intent or negligence in conduct.

There are no formal requirements as to the nature or the presentation of evidence as long as it concerns the actual discharge. Securing evidence is often very difficult and many cases have been closed because of the lack of evidence.

5.2.2 Estonia

In the case of violations of anti-pollution regulations inspectors of the Estonian Environmental Inspectorate complete detailed information proving the offence with copies of necessary documentation, laboratory analyses.

In case of accidents, samples of spilled oil or harmful substances should be taken immediately and then submitted for analysis. Samples should also be taken from oil cargo tanks, bunker tanks and machinery spaces. A report on the observation of the accident, maps of location of oil spill, copies of Oil Record Books, log books, etc. should be added.

5.2.3 Finland

As evidence the competent administrative agency or prosecution accept testimony of police officers or other witnesses, statements of the offenders, photographs of oil spills or photographs taken on board the ships, expert's opinions on samples taken from tanks, machinery space or oil spills and copies of the Oil or Cargo Record Book.

In the Finnish enforcement practice various forms of evidence are used and no fixed formal requirements exist. Common forms of evidence may include for example the testimony of police officers, audio-visual material obtained by surveillance, samples and statements obtained from officers on board the ship, together with copies of the ship's documents, etc.

A public prosecutor shall press charges where there is probable cause in support of the guilt of the suspect for an offence. The court has full discretionary powers in regard to the evidence presented thereto.

5.2.4 Germany

As evidence the competent prosecution or administrative agency accept testimony of police officers or other witnesses, statements of the offenders, photographs of oil spills or photographs taken on board the ships, expert's opinions on samples taken from tanks, machinery space or oil spills and copies of the Oil, Cargo and Garbage Record Book.

In the German enforcement practice, various forms of evidence are used for which no fixed formal requirements exist. Common forms of evidence include the testimony of police officers, audio-visual material obtained by means of surveillance (e.g. photographs), samples and statements obtained from officers on board the ship, together with copies of the ship's documents.

5.2.5 Latvia

In the case of violation of anti-pollution regulations or mere breaches of obligations, inspectors of the Marine Environment Board complete the documents necessary to evaluate the violation.

The inspectors of the Marine Environment Board complete the following documents:

- a document on the observation of seawater quality protection legislation;
- report on the violation of the law on environmental protection and on use of natural resources.

In case of emergency, samples of spilled oil, harmful substances should be taken immediately and then submitted for analysis. Samples should also be taken from oil cargo tanks, bunker tanks and machinery spaces. Maps of location of oil spill, copies of oil report books, log books etc. should be added.

5.2.6 Lithuania

Environmental State Inspectors and jurist of the office complete for the court the following documents:

- report on the observation of the accident;
- detailed information proving the offence with copies of necessary documentation, laboratory analyses.

There are no special rules concerning the evaluation of evidence, and environmental crimes are often difficult to prove.

5.2.7 Poland

All kind of evidence are admitted. There are no special rules concerning the evaluation of evidence.

5.2.8 Russia

No special rules as to evaluation of evidence.

5.2.9 Sweden

There are no formal rules of evaluation of evidence.

In case of the water pollution fee, it is enough to prove that a prohibited discharge of oil has been made from a certain ship. It is not necessary to prove which person has done the discharge or his intent or negligence.

6 Who can be held liable

6.1 Summary

A physical person or a company (legal entity) can be held liable for a violation of anti-pollution regulations.

All Baltic Sea States may prosecute a physical person. Apart from Germany and Sweden all Baltic Sea States also have the possibility to prosecute a company (legal entity). In Sweden a shipowner is, however, held responsible for the payment of the administrative Water Pollution Fee.

In some Baltic Sea States certain violations can only be referred to the physical person actually committing them, whereas for other violations a responsible position is assumed and a superior, i.e., usually the master or shipowner, is held responsible.

6.2 Specific information from:

6.2.1 Denmark

According to the Danish Act for the Protection of the Marine Environment and the Act for Safety of Sea a fine can be imposed on a legal entity as well as on an individual. For certain infringements, i.e., discharge of oil, the shipowner or the operator can be fined even if the infringement is not made due to intent or negligence in conduct.

The person who is held responsible for the violation is the person who actually caused the discharge or who neglected his duty to keep the Oil Record Book. The master has the main responsibility to keep the Oil Record Book. If he delegates the duty to another member of the crew both he and the crew member will be held responsible for the negligence.

6.2.2 Estonia

According to Estonian law, fines can be imposed both on a legal entity and individuals.

The person held responsible for violations of the discharge provisions is the ship's master.

The person responsible for keeping the Oil Record Book is in general the Chief Engineer.

The pollution charge for the releases of pollutants or wastes into sea water from a vessel or an oil terminal shall be paid by the possessor of the vessel or terminal.

6.2.3 Finland

According to the Act on the Protection of the Sea, parties liable for violations of the prohibition against pollution may include Finnish vessels, deep-sea units and aircraft. The prohibition against pollution also applies to Finnish citizens and corporations. According to the Act on the Prevention of Pollution from Ships, the master of a vessel shall notify the authorities responsible for oil pollution response, the pilot station, the Coast Guard, the regional Emergency Response Centre or police of oil pollution incident or a threat thereof, and take such immediate response measures as may be reasonably required of him. The master of a vessel shall also keep

records and report matters relevant to the prevention of water pollution caused by vessels. Penal liability under the Water Act may also apply to parties subject to permits and notification requirements, for example.

According to the Penal Code, a penalty for an environmental offence shall be imposed on the party, whose duties the act or omission violates. According to the provisions of the Act on the Protection of the Sea, the Water Act and the Act on the Prevention of Pollution from Ships, the penalty shall be imposed on the person, who has violated the law or neglected his obligations. This person may be the person responsible for keeping the Oil Record Book or the master of the vessel, for example.

It is possible to impose a corporate fine on a corporation, if a member of its executive body or other management has been party to an offence or has allowed the commission of the offence. A corporate fine may also be applicable where a corporation has failed to exercise due care and caution in order to prevent an offence. A corporate fine may only be imposed for violations of the Penal Code, i.e. in more serious cases.

6.2.4 Germany

Penal Law:

According to German Penal Law the person actually causing the discharge can be held responsible.

The master of the ship is responsible if he neglects his duty to take adequate measures to ensure that a maritime pollution is not committed on board of the ship (This duty is mentioned in Art. 1 b of the German MARPOL Implementation Act).

An offender has to be identified as a physical person; a company can not be incriminated.

Administrative regulations:

In cases of violations of administrative regulations the following persons are held responsible:

- for violations of the duty to keep the Oil, Cargo and Garbage Record Book properly, the master of the ship and the engineers or other crew members responsible for keeping the books.
- for violations of Regulations 17 Paragraph 3 of Annex I to MARPOL 73/78 the master and the person in the engine room who is in charge of the piping system.
- for violations of the discharge provisions of Annexes I, II and V to MARPOL 73/78 the master and the person who actually committed the discharge.
- for violation of the provisions of the Helsinki-Convention concerning the discharge of sewage the master of the ship or the crew members responsible for the sewage treatment on board.

6.2.5 Latvia

The Administrative Code chapter "On imposing penalty in cases of violation of environmental protection regulations" provides that the Marine Environment Board may impose fines on a person, master of ship or any responsible crew member.

According to Latvian law fines can be imposed both on a legal entity and on individuals.

6.2.6 Lithuania

Lithuanian Administrative and Penal Codes provide for punishment of one or several responsible persons: shipowner, ship master, mechanic, crew-member. All the persons who have actually committed the offence may be prosecuted for the violation by inspectors of environmental protection.

6.2.7 Poland

The Act on the Prevention of Pollution of the Sea from Ships, 1995, puts on the ship's master the responsibility to ascertain and ensure that:

- 1) the vessel at commencement of a voyage and during it, or during any other marine activity, complies with requirements concerning prevention of pollution of the sea, confirmed by relevant certificates, and that the vessel has a contingency plan to protect against pollution of the sea,
- 2) required oil and cargo records are kept up to date,
- 3) the crew is properly trained in activities to prevent pollution of the sea.

6.2.8 Russia

In accordance with the Russian Administrative Code, fines can be imposed on an individual and/or legal entity irrespective of form of their property.

The shipowner is held responsible for the survey of the vessel in accordance with established procedures and for preparation of the vessel for voyage, including equipment, systems and fittings needed for preventing pollution from ships.

The ship's master is held responsible for violation of anti-pollution regulations on the ship.

6.2.9 Sweden

A person who intentionally or by negligence violates any prohibitions of water pollution from ships or who neglects to minimize as far as possible the consequences of a discharge caused by accident, shall be fined or condemned to imprisonment up to two years, if the deed is not imposed with more severe punishment in the Criminal Code. A master who has not executed necessary supervision to avoid discharges contrary to Swedish regulations shall be condemned to the same punishments. If the master has transferred the responsibility for the supervision of handling on board of harmful substances to a special officer, this officer will be punished instead. Also the shipowner or manager can be condemned as if he had done the crime himself, if he has not done what could be expected of him to prevent a prohibited discharge.

Responsible for the payment of the water pollution fee is the shipowner at the time of the infringement. If the shipowner at that time had assigned the responsibility for the operation of the ship to someone else, for example a manager or a bareboat charterer, that person will be held liable for the payment.

7 Penalties

7.1 Summary

Penalties imposed for violations of anti-pollution regulations cover both fines and imprisonment. Whereas all Baltic Sea States have the possibility to impose a fine, only Denmark, Germany, Finland and Lithuania have the possibility to impose imprisonment.

In order to ensure observance of the anti-pollution regulations the Baltic Sea States have decided to harmonize the administrative fines by deciding on a minimum level, cf. Section 3.1 and HELCOM Recommendation 19/14.

7.2 Specific information from:

7.2.1 Denmark

The sanctions to be imposed vary in dependence of the evidence of intent or degree of negligence in conduct by the master or crew members. If intent or gross negligence in conduct can be proven and the infringement has damaged the environment or the infringement has been committed due to economic considerations, ordinary imprisonment or prison up till two years can be imposed.

Otherwise infringement of discharge standards is punished by fines.

Looking through case-law, masters are normally fined for illegal discharges at sea. The amount of the fines varies between 300 and 800 USD. In case of violations of the duty to keep an Oil or Cargo Record Book, cases are mostly withdrawn or closed with a warning.

7.2.2 Estonia

Level of administrative fines:

- 1) Annex I to MARPOL 73/78
 - a) Illegal discharge
Fines up to 350 USD (individuals) and 7,800 USD (legal entity).
The shipowner has to pay the pollution charge 18,000 USD per tonne of discharged oil (in 2000).
 - b) Violation of the duty to keep the Oil Record Book properly
Fines from 125 USD to 300 USD.
- 2) Annex II to MARPOL 73/78
 - a) Illegal discharge
Fines up to 350 USD (individuals) and 7,800 USD (legal entity).
- 3) Annex V to MARPOL 73/78 and Regulation 7 of Annex IV of the Helsinki Convention
Illegal discharge of garbage or sewage
Fines up to 350 USD (individuals) and 7,800 USD (legal entity).
The shipowner has to pay a pollution charge, calculated by the Estonian Environmental Inspectorate depending on the amount of discharged substances.

7.2.3 Finland

According to the penal provision of the Act on the Prevention of Pollution from Ships, violation of antipollution regulations on a vessel is only punishable by a fine. The sanction entailed in the penal provisions of the Water Act is also a fine.

An environmental offence falling under the Penal Code is punishable by imprisonment, a fine or a corporate fine. Sanctions for environmental offences vary between a fine and six years imprisonment. Fines shall be imposed in the form of day-fines, the number of which shall correspond to the blameworthiness of the act. The amount of a day-fine is determined in accordance with the offender's daily income. It is also possible to impose a corporate fine for an environmental offence on a corporation, where a member of its management has committed the offence. A corporate fine is a discretionary sanction, which does not require that any one person be sentenced for an environmental offence. The minimum amount of a corporate fine is five thousand Finnish marks, the maximum being five million Finnish marks.

In addition to the above-mentioned sanctions, another possible sanction is confiscation, i.e. declaring the proceeds or instrumentalities of an offence forfeit to the State.

7.2.4 Germany

- 1) Penal Law
Intentional unauthorised pollution of water carries a penalty of imprisonment of up to 5 years or the imposition of a court fine which is to be imposed per diem and amount to a maximum of 360 days at 10,000 German Marks per day. If the offender acts negligently, the maximum term of imprisonment is reduced to 3 years.
- 2) Administrative regulations
Offences against the discharge regulations of MARPOL 73/78 and the Helsinki Convention which do not simultaneously fulfill one of the aforementioned parts of the criminal offence, can be punished with an administrative fine of up to 100,000 German Marks.

For violations of the duty to keep the Oil, Cargo or Garbage Record Book properly administrative fines of up to a maximum of 50,000 German Marks can be imposed. For breaches of the duty to keep an Oil Record Book properly a differentiation is made between the case in which the amount of sludge is not recorded in the Oil Record Book, but is still on board or has probably been burned, and cases in which the entries in the Oil Record Book are insufficient and there is a strong suspicion that it had been discharged illegally. In the latter cases the fine imposed will be up to ten times as high as in the former cases.

For violations of Regulation 17 Paragraph 3 of Annex I to MARPOL 73/78 an administrative fine of up to 50,000 Marks can be imposed.

7.2.5 Latvia

The Administrative Code, paragraph 61, provides the following penalties in the case of an offence against the duty to make complete and correct entries in the Oil Record Book:

- masters, responsible crew members of Latvian citizenship - up to Ls 250;
- foreign masters, responsible crew members - from Ls 250 to 1,500 .

Administrative Code paragraph 82 provides the penalty imposed in the case of violations of antipollution regulations in Latvia's economic zone and territorial sea:

- for ship masters, responsible crew members - up to Ls 250;
- for foreign ship masters, responsible crew members – Ls 1,000 to 5,000.

Administrative Code paragraph 82² provides:

- the penalties imposed in the case of violation of the obligation to report to the nearest port administration on discharges of harmful substances,
- for masters, responsible crew members of Latvian citizenship - up to Ls 200,
- for foreign ship masters, responsible crew members – Ls 100 to 1,000.

The levels of administrative fines are different:

- a) for ships flying the Latvian flag administrative fines are until 250 Ls,
- b) for ships flying flags of other countries administrative fines are from Ls 1,000 to 5,000.

For actual pollution by oil an environmental damage reimbursement of 32 Ls (59 USD) per kg is levied.

In case a ship violates anti-pollution regulations in another Baltic Sea State, and on request of that State in accordance the Latvian rules, the Latvian authorities shall have the right to carry out full investigations but do not have the right to impose a fine.

Administrative measures can be applied: fines, disqualification, cancelling of international certificate on oil pollution prevention.

In 1991 by Law "On natural resources tax" the following kinds of payments and taxes have been introduced:

- payments on the use of natural resources,
- payments for environmental pollution within set limits,
- fines on pollution exceeding the set limits.

Taxes/fines have been determined according to the class of toxicity of pollutant and the level of emission. Assessment of the toxicity of the discharge in accordance with the above classification is carried out by the Environmental Protection Committee of the Republic of Latvia. Oil, oil products, phenols, chlororganic substances are classified as "toxic substances" (the third class) and the tax rate for water pollution within set limits is 8,000 Ls/t, and the fine on pollution exceeding the set limits is 32,000 Ls/t.

7.2.6 Lithuania

Lithuanian Administrative Law Violation Code (article 56) provides for fines of up to 1 million Lithuanian Litas (250,000 USD) for violations of the regulations preventing pollution of the sea.

Lithuanian Republic Penal Code (article 245) provides for personal punishment of up to 5 years of imprisonment. Lithuania is preparing a new Law on Marine Environment Protection.

In those cases where, under national legislation, offences against the MARPOL or Helsinki Conventions may be fined as breaches of administrative regulations, the fines shall be imposed according to the following criteria. The main regulations were passed by order of Lithuanian Republic Government No. 41 from June 10, 1993 and Orders of the Lithuanian Republic Transport Ministry from April 21, 1994.

- 1) Annex I to MARPOL 73/78
 - a) illegal discharge (Regulations 9 and 10). Fines from 2,000 to 25,000 USD (60 USD per kg of oil).
 - b) Violation of the duty to keep the Oil Record Book and Cargo Record Book properly (Regulation 20, paragraphs 4 and 5). No Oil Record Book kept on board or entries are missing or wrong. Fines from 750 to 1,250 USD.
- 2) Annex II to MARPOL 73/78
 - a) Illegal discharge of noxious liquid substances (Regulation 5). Fines from 500 to 250,000 USD.
 - b) Violation of the duty to keep the Cargo Record Book properly. Fines up to 750 USD.
- 3) Annex V to of MARPOL 73/78
Illegal discharge of garbage (Regulation 5). Minimum fine: 62.5 USD.
- 4) Annex IV of the Helsinki Convention
Illegal discharge of sewage (Regulation 7). Minimum fine: 62.5 USD.
- 5) Annex IV of Helsinki Convention
Illegal incineration on board of ships (Regulation 9). Minimum fine: 125 USD.

All ships must observe all the international and national requirements.

The Penal Code provides, for intentional unauthorized pollution of water with heavy consequences to the sea fauna and flora, a penalty of imprisonment of up to five years or the imposition of a court fine.

The Administrative Code provides for different fines imposed on the responsible persons according to the offence against discharge regulations of MARPOL 73/78 and Helsinki Convention. The maximum administrative fine is up to 250,000 USD.

7.2.7 Poland

On a ship's operator from whose ship, while staying in the Polish sea areas, a pollution of the marine environment took place in violation of the provisions of the Act, in connection with the ship's operation, or as a result of dumping in the sea of wastes or other matters - a fine shall be inflicted, equivalent to 1,000,000 SDR (*Special Drawing Rights*), as defined by the International Monetary Fund.

This fine shall also be inflicted on a ship's operator of a ship flying Polish flag which, in violation of the provisions of the Act, pollution took place of the marine environment situated outside the Polish sea areas, in connection with the ship's operation, or as a result of dumping in the sea of wastes or other matters, without a required permit, or contrary to its condition.

If a master, or other member of the ship's crew, by not fulfilling the duties imposed on him by force of the law:

- 1) does not take care of the ship's seaworthiness, or other function on the sea concerning the prevention of pollution of the sea,
- 2) does not keep the Oil or Cargo Record Book,

- 3) does not send up the ship to survey or inspection the vessel for survey or inspection, makes difficulties or prevents a survey or inspection required by the MARPOL 1973/78 convention,
- 4) causes pollution of the sea,
- 5) does not provide notification of the notified pollution, or report on the imminent danger of pollution or on the pollution of the marine environment,
- 6) does not take necessary measures in order to prevent the pollution, or to limit or eliminate pollution of the marine environment, resulting from an accident,
- 7) does not transmit, upon the demand of competent agencies, the information in the cases foreseen in the Act,
- 8) does not discharge, either in the port or at the ships repair shipyard, the remaining noxious matters to land-based facilities, if the volume of the noxious substances left on the ship exceeds the volume of the ship's installations, when taking into account the technical appliances for their harmless removal,
- 9) does not report to the inspection agencies the incidents which exercise a considerable influence on the technical condition of the ship, her appliances or equipment, thus causing a danger to the marine environment,

shall be liable to a fine up to an amount not exceeding twenty times the average monthly salary in the national economy for the preceding year, as published by Chairman of the Central Office of Statistics.

7.2.8 Russia

Administrative fines

At present the level of the fines is calculated in accordance with the minimum monthly salary in Russian national economy. The maximum fines imposed by administrative means are three thousand times the minimum salary. This procedure may be modified in connection with the reform of the tax law.

In accordance with the administrative regulations before the proceedings are finalized a fine could be imposed on an individual, after the proceedings are finalized a fine could be imposed on a legal entity. In case of dispute there is a possibility to bring the case to the Court of Arbitration for a final decision.

The level of the fines is calculated in accordance with the Estimation procedure for economic damage to environmental. The maximum fines imposed by administrative means are equal to twenty times the official minimum salary in the Russian Federation.

Breaches of administrative regulations are fined.

7.2.9 Sweden

A special Swedish administrative fee (water pollution fee) is charged, if the prohibition to discharge oil from ships has been infringed and the discharge is not insignificant. Such a fee is charged also if a discharge of oil caused by accident has not been limited as far as possible. The fee is charged irrespective of a criminal punishment, not as a replacement for it.

The amount of the water pollution fee charged depends on the extent of the discharge and the size of the ship (gross tonnage).

Fines shall be imposed as day-fines or, if the punishment for the crime should be less than 30 day-fines, to money-fines. The number of day-fines reflects the blameworthiness of the offence and the amount reflects the income level of the person condemned. The number of day-fines may vary from 30 to 150 or, if it is a joint punishment for several crimes, at most 200. The amount of a day-fine may vary from 30 to 1,000 Swedish crowns. Money-fines may vary from 100 to 2,000 Swedish crowns, or in cases of joint punishment, at most 5,000 Swedish crowns.

8 Statutory period of limitation

8.1 Summary

The legislations of the Baltic States provide for a period of limitation varying from two to five years in respect of prosecution of violations of anti-pollution regulations. A statutory period of limitation is also provided for in respect of execution of penalties, varying from three to five years. In addition, Sweden has ruled that an execution never can take place 15 years after the commitment of the violation.

8.2 Specific information from:

8.2.1 Denmark

In order to convict an offender of discharge regulations, a writ must be served within either two or five years of the action which led to the illegal discharge. The statute of limitation being two years in case of punitive measures embracing fines and imprisonment up to one year and being five years in the case of punitive measures embracing imprisonment up to two years.

8.2.2 Estonia

The statutory period of limitation depends on the highest sentence stipulated for the crime or offence concerned and is from three (3) months to ten (10) years.

8.2.3 Finland

The statutory period of limitation for offences depends on the maximum penalty applicable. Environmental offences under the Penal Code, which are punishable by imprisonment, fall under the statute of limitations after ten years. Minor violations in turn, which are punishable by a fine, fall under the statute of limitations after two years.

Forfeiture may not be sentenced if an act is no longer punishable due to expiration of the statutory period of limitation. However, the minimum statutory period of limitation for a claim concerning forfeiture is five years.

8.2.4 Germany

The statutory period of limitation for prosecuting violations of the Penal Code (water pollution) is five years, starting with the end of the illegal discharge.

The statutory period of limitation for the execution of fines imposed for violations of the Penal Code is five years.

The statutory period of limitation for prosecuting violations of administrative regulations (duty to keep the Oil, Cargo or Garbage Record Book properly, illegal discharges, illegal pipe in contravention of Regulation 17 Paragraph 3 to MARPOL 76/78) is three years. In cases of improperly kept record books the period of limitation starts with the detection of the violation.

The statutory period of limitation for the execution of fines imposed for violations of administrative regulations is three years for fines of up to 1,000 Marks, five years for higher fines.

8.2.5 Latvia

The administrative penalty must be imposed within two months from the day, when violation was occurred or, if violation is lasting – when violation was detected.

In cases of actual oil pollution environmental damage reimbursement are levied by court. There is no statutory period of limitation.

8.2.6 Lithuania

The Statutory period of limitation of the Penal or Administrative Code is three years.

8.2.7 Poland

A fine shall not be imposed after 5 years from the date on which the violation was committed. The fine shall not be executed after 5 years from the final decision on the fine

8.2.8 Russia (no information)

8.2.9 Sweden

The statutory period of limitation for sanctions depends on the highest sentence stipulated for the crime. If it is less than two years of imprisonment, the limitation is five years from the day of detention or the day of serving.

Sanctions can never be sentenced later than 15 years from the day of the offence.

Reference list of national acts and regulations

A FINLAND

List of acts:

- Act on the Prevention of Pollution from Ships 16.3.1979/300
- Act on the Protection of the Sea 29.12.1994/1415
- Penal Code 19.12.1889/39A
- Decree on the Application of Section 7 of the Penal Code 16.8.1996/627
- Criminal Procedure Act 11.7.1997/689
- Water Act 19.5.1961/264

B GERMANY

Extract from the UNCLOS Implementation Act

Article 12

Expansion of the scope of application of German penal law

German penal law shall apply to criminal offences to the detriment of the environment in the cases referred to in Sections 324, 326, 330 and 330bis of the German Penal Code, when committed from a vessel in the North Sea or the Baltic Sea outside the German Exclusive Economic Zone by the discharge of substances under violation of administrative-legal obligations (Section 330quinter (Items 4 and 5) of the German Penal Code) serving the purpose of implementing conventions for the protection of the sea binding under international law. In cases where such offence has been committed in the territorial sea of another State, the provisions of the foregoing sentence shall apply when such offence is punishable under the laws and regulations of that State. For the purposes of delimiting the North Sea, the provisions of Article 2 of the Agreement for Co-operation in Dealing with Pollution of the North Sea by Oil and Other Harmful Substances, of 13 September 1983 (promulgated in the Federal Law Gazette 1990 II, p 70) shall apply.

Extract from the MARPOL Implementation Act

Article 1b

Notwithstanding the responsibility of the owner or operator of a vessel for organizing its operational safety, the vessel's master, as the person responsible for all on-board measures to prevent maritime pollution, shall take adequate measures to ensure that a violation as defined in Art. 4 of the Convention is not committed.

Extract from the German Penal Code

Section 324

- I Whosoever illegally pollutes or otherwise adversely affects the quality of waters will be punishable with a term of imprisonment up to five years or a fine.

- II The attempt is punishable.
- III Should the culprit act negligently, the penalty is a term of imprisonment of up to three years or a fine.

C POLAND

Act concerning the maritime areas of the Polish Republic and the marine administration, 21 March 1991 (*Dziennik Ustaw* Nr 32, poz.131).

(...)

Article 2

- 1. the maritime areas of the Polish Republic are:
 - (1) The internal waters;
 - (2) The territorial sea;
 - (3) The exclusive economic zone.

(...)

Article 50

- 1. The maritime inspectorate, carrying out in Polish maritime areas the tasks referred to in article 42, shall have the right:

(...)

- (3) To discover any pollution of the marine environment caused by activities at sea and to discover the persons responsible thereof.

(...)

Article 55

- 1. A shipowner from whose, during its stay in Polish maritime areas, the following activities are carried out in violation of the provisions of this Act and other Acts and of regulations issued on the basis thereof:

(...)

- (2) Pollution of the marine environment;

(...)

shall be punishable by a fine equivalent to not more than 1 million units of account known as *Special Drawing Rights* (SDR), defined by the International Monetary Fund.

(...)

Article 57

- 1. The fines referred to in articles 55 (...) shall be imposed by the Director of the Maritime Board in the form of administrative decisions.
- 2. Appeals against the decisions referred to in paragraph 1 may be lodged with the Minister of Transport and Marine Economy.
- 3. The decisions referred to in paragraph 1 shall be immediately executable.

Article 58

- 1. No fine may be imposed if five years have elapsed since the date on which the deed in question was committed.
- 2. A fine which has been imposed shall not be collected after the expiry of five years from the date on which the final decision to impose the fine was taken.

Article 59

In order to guarantee the levy of the fine, the Director of the Maritime Board may require the offender to provide security, and in the event of refusal, he shall apply to an enforcement authority for seizure of the ship or other articles with the aid of which the violation of regulations was committed.

2. Pending the issuance of an order for seizure of the ship, the Director of the Maritime Board shall make arrangements for the detention of the ship, but not longer than for 48 hours.
3. The guarantee of the levy of the fine shall consist in the payment of the amount established by the authority conducting the proceedings into that authority's deposit account or in the provision of a bank guarantee by a bank or insurance institution which has its head office in Poland.
4. Fines imposed on the basis of articles 55 (...) which have not been paid within the designated period shall be subject, together with the interest for the period of the delay, to collection in the manner defined in the regulations for enforcement proceedings in the administration.

(...)

Act of 16th March 1995 on the prevention of pollution of the sea from ships (*Dziennik Ustaw Nr 47, poz. 243*)

Chapter 1 *General Provisions*

Article 1

For the prevention of pollution of the sea from ships shall be applicable:

- I. the provisions of the following international agreements, with modifications valid as from their entry into force for the Republic of Poland, made properly known to the public:
 - a) International Convention for the Prevention of Pollution from Ships, 1973, done in London on the 2nd of November 1973, as modified by the Protocol of 1978 relating thereto done in London on the 17th of February 1978 (*Dziennik Ustaw 1987, Nr 17, poz. 101*), hereinafter called "the MARPOL Convention 1973/78".
 - b) Convention on the Protection of the Marine Environment of the Baltic Sea Area, done at Helsinki on the 22nd March 1974 (*Dziennik Ustaw 1980, Nr 18, poz. 64*), hereinafter called "the Helsinki Convention",
 - c) Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Mater, done in Moscow, Washington, London and Mexico, on the 29th of December 1972 (*Dziennik Ustaw 1984, Nr 11, poz. 46*), hereinafter called "the Convention on Dumping",
2. the provisions of the present Act.

Article 2

- I. Subject to paragraphs 2 and 3, the provisions of this Act shall be applicable:
 - 1) to ships found within the Polish sea areas,
 - 2) to ships of Polish nationality found outside the boundaries of such areas.

2. The provisions of the international conventions referred to in Article 1 shall be applicable on the Polish sea areas also with regard to ships of the nationality of a State not being the party to either of them; however the provisions of the above conventions shall be applicable to such ships so far only, as it is necessary to assure that such ships will not cause pollution.
3. The Council of Ministers may, by way of an ordinance, subject to all, or to certain provisions of this Act, the floating units of the Navy, the Coast Guard and the Police, as well as the ships on special State service and other ships not covered by the international conventions mentioned in Article 1.

Article 3

The provisions of this Act shall not be applicable, if an international convention to which Republic of Poland is a party provides otherwise.

Article 4

In the meaning of the present Act:

- 1) "ship" - means a floating structure operated in the marine environment and includes also hydrofoil boats, air cushion vehicles, submersible vessels, as also fixed and floating drilling platforms,
- 2) "ship's operator" - means person who, by using a ship of his own, or of somebody's else, carries out operations in the marine environment in his own name,
- 3) "ship master" - means a person who directs the work on the ship.

Chapter 2

Pollution from the Operation of Ships

Article 5

For the prevention of pollution of the sea in connection with the performance of navigation, or with carrying out another maritime activities by ships, the provisions of the MARPOL Convention 1973/78 shall be applicable, and with regard to the Baltic Sea - also provisions of the Helsinki Convention.

Article 6

A ship may not be employed in the sea navigation, or used for performing other activities on the sea, unless she complies with the requirements concerning the prevention of pollution of the sea, as determined:

- 1) in respect of ships covered by the MARPOL Convention 1973/78 - in the provisions of that Convention,
- 2) in respect of other units - in the provisions of this Act, or those published on its basis.

Article 7

1. In order to ensure the observance by a ship of the requirements referred to in Article 6, the ship shall be liable to undergo surveys and inspections within the scope and dates determined in the international conventions, or the provisions of this Act.
2. Irrespective of the surveys and inspections referred to in paragraph 1, the ship may be subjected to occasional inspections.
3. The inspection agencies are the directors of the Maritime Boards, and abroad also the consuls.
4. The Minister of Transport and Maritime Economy may, by way of an ordinance, entrust the determined tasks of the inspection agency to a classification institution.

5. The inspection agency may each time authorise to carry out the determined surveys, or inspection functions by persons, or classification institutions determined for that purpose, also foreign ones.
6. The Minister of National Defence and the Minister of International Affairs, either of them within the scope of his activities, will determine, by way of an ordinance, the inspection agencies for the floating crafts of the Navy, the Coast Guard and the Police, as well as the procedure of carrying out the surveys and inspections, and also their kinds.

Article 8

1. In the case of a positive result of the surveys and inspections, the inspection agency shall issue for the ship international certificates foreseen in the MARPOL Convention 1973/78, valid for 5 years, and shall confirm their validity basing on the annual and intermediate inspections.
2. The Polish inspection agency may issue the international certificate in confirmation that the requirements foreseen in the MARPOL Convention 1973/78 were complied with to a ship of foreign nationality, upon the application of a competent agency of the State of the ship's nationality, being a party to that Convention.
3. The certificates referred to in paragraphs 1 and 2, shall cease their validity before expiration of the period for which they were issued in the cases:
 - 1) when, without a consent of the inspection agency, essential modifications were introduced in the ship's construction equipment, systems, fittings, installation, or materials
 - 2) when their validity was not confirmed,
 - 3) when the ship's nationality was changed.
4. Charges will be levied for the performance of the surveys and inspections, as well as the issuance or confirmation of the international certificates.

Article 9

The ship master is under a duty to check and to ensure:

- 1) that before the commencement and during the navigation, or while performing other maritime functions, the ship did comply with the requirements concerning the prevention of pollution of the sea, as confirmed by suitable certificates, as well as that she was holding a plan for protection of the sea against pollution,
- 2) that the required records concerning oils and cargoes are kept currently,
- 3) that the ship is manned with the crew properly trained in exercising the functions to prevent pollution of the sea.

Article 10

1. A ship during her stay in the port, or at a ships repair yard, should take use of the reception facilities, if the volume of noxious substances left on board exceeds the capacity of the ship's installations, taking into consideration the technical possibilities for their harmless removal.
2. The port sanitary inspection agencies may make dependent the reception of pollutants from the ship and the removal of ballast waters on the results of the performed inspection.
3. The entity exercising the management of the port, the offshore terminal, or the ships repair yard, is under a duty to ensure at its territory sufficient reception facilities for the reception of pollutants from the ships; such facilities should be sufficient to meet the demands on the part of ships taking use thereof, up to the limits necessary for the removal of pollutants.
4. In the case of deficiency of the reception facilities, as referred to in paragraph 3, the port, the offshore terminal, or the ships repair yard are under a duty to advise thereof immediately the Director of the Maritime Board.

Article 11

1. The master of a ship of Polish nationality, who has noticed a pollution on the sea, or an incident, either causing, or likely to cause the spill of oil, or a pollution of another nature, has to pass immediately a report thereof to the coastal radio station of the nearest Coastal State.
2. The master of a ship of Polish nationality:
 - 1) involved in an incident, either causing the danger of pollution of the marine environment, or the pollution of the marine environment,
 - 2) on which board an event took place, either causing the danger of pollution of the marine environment, or the pollution of the marine environment, should immediately advise thereof the coast radio station of the nearest Coast State, as well as to pass a report to the Director of the Maritime Board appropriate for the ship's home port, following the guidelines contained in the Protocol I to the MARPOL Convention 1973/78.
3. If the master of a ship, for a justified reason, was not able to pass the report, as referred to in paragraph 2, it is the obligation of the ship's operator.

Article 12

The master of a ship involved in the accident, as referred to in Article 11, should undertake immediately all the actions necessary:

- 1) to prevent pollution of the marine environment,
- 2) to reduce pollution of the marine environment,
- 3) to recover pollution of the marine environment.

Article 13

1. The master, or the ship's operator of a ship of Polish nationality, in the event of accident on board the ship, or discovery of damages exercising a serious influence on the technical condition of the ship, her installations and equipment, and causing danger of pollution of the marine environment, should advise immediately thereof the Polish inspection agency.
2. If a ship of Polish nationality is found in the port of a State being a Party to the MARPOL Convention 1973/78 party and an accident took place, as referred in paragraph 1, either the master, or the ship's operator should also advise there of the appropriate agencies of that State.

Article 14

1. The Minister of Transport and Maritime Economy, in agreement with the concerned Ministers may determine, by way of an ordinance, detailed regulations concerning the prevention of pollution the sea from ships.
2. The Minister of Transport and Maritime Economy may, by way of an ordinance, introduce for application the recommendations concerning the prevention of pollution of the sea from ships, as adopted by the International Maritime Organisation or Baltic Maritime Environment Protection Commission, hereinafter called "the Helsinki Commission".
3. The Minister of Transport and Maritime Economy may, by way of an ordinance, recognise as obligatory the technical regulations concerning the prevention of pollution of the sea in respect of the ships' designing construction and equipment with regard to:
 - 1) ships classified by the Polish classification institution - those issued by that institution,
 - 2) ships of Polish nationality classified by foreign classification institution - those issued by these institutions.
4. The Minister of Transport and Maritime Economy will determine, by way of an ordinance, the procedure of carrying out the surveys and inspections, the patterns of the international certificates and the method of their confirmation, as well as the amount of fees for the functions referred to in Article 8, paragraph 4.

Chapter 3

Dumping of Wastes and Other Matters from Ships

Article 15

In respect of the dumping of wastes and other matters from ships the provisions of the Convention on Dumping shall be applicable, and within the Baltic Sea Area also the provisions of the Helsinki Convention.

Article 16

1. It is prohibited to dump the wastes and other matters, except for the cases determined in the Helsinki Convention:
 - 1) by ships of Polish nationality - within the Baltic Sea Area,
 - 2) by ships of foreign nationality - within the Polish sea areas.
2. It is prohibited on the territory of Poland to load on the ships, regardless of their nationality, any wastes or other matters which are to be dumped within the Baltic Sea Area.
3. It is not prohibited to discharge into the sea the excavated material from the dredging of the sea bottom, if it was carried out in conformity with the provisions of Annex V of the Helsinki Convention - subject to obtaining an appropriate permit.

Article 17

1. It is prohibited to dump in the sea from ships of Polish nationality any wastes, or other matters, as listed in Annex I to the Convention on Dumping, except the cases determined in Article V, paragraph 1 of the Convention and subject to its provisions.
2. It is prohibited to load on the territory of Poland on the ships, regardless of their nationality, any wastes or matters, as listed in paragraph 1, which are to be dumped in the sea, except for the cases determined in Article V, paragraph 2 of the Convention on Dumping, as well as in conformity with its provisions and subject to obtaining a permit foreseen there.
3. It is not prohibited to dump in the sea from the ships of Polish nationality, or to load on the territory of Poland on the ships, regardless of their nationality, with destination to be dumped in the sea, the wastes or other matters listed in the Annex II to the Convention on Dumping, subject to obtaining a special permit, and any wastes or matters other than those listed in Annexes I and II to the said Convention - subject to obtaining a general permit thereto.

Article 18

1. The permits referred to in Article 16, paragraph 3 and Article 17, paragraphs 2 and 3, are issued by Director of the Maritime Board to ships:
 - 1) loaded on the territory of Poland,
 - 2) of Polish nationality.
2. The Minister of Transport and Maritime Economy, in agreement with the Minister of the Protection of Environment, Natural Resources and Forestry, will determine, by way of an ordinance, the procedure for issuance of the permits referred to in paragraph 1.

Article 19

Basing on the notification made by a ship master, the Director of the Maritime Board has to report the fact of dumping:

- 1) in the cases defined in Article 9, paragraph 4 of the Helsinki Convention - to Helsinki Commission,
- 2) in the cases specified in Article V of the Convention on Dumping to the International Maritime Organisation.

Article 20

The Minister of Transport and Maritime Economy has to submit to the appropriate international organisations periodical information with regard to the issued permits and the dumpings effected on their basis.

Chapter 4

Combatting Pollution of the Sea and International Cooperation in this Sphere

Article 21

- I. The Director of the Maritime Board who receives a notification, or a report to in Article 11, or who receives information from other source on the pollution, or the danger of pollution of the Polish sea areas, is under a duty:
 - 1) to make an estimate of the real situation in order to establish the kind and extent of the pollution of the sea, or the danger of pollution,
 - 2) to order and to commence, if necessary, appropriate operations,
 - 3) to advise immediately the appropriate agencies of the other States being the parties to the Helsinki Convention, of the existing situation and on the commenced or intended operations, if the spill spreads over to the sea area of such States.
2. In the case of pollution or a danger of pollution of the Polish sea area, the Director of the Maritime Board may order the ship master:
 - 1) to leave the Polish sea areas by the ship,
 - 2) to tow out, to salvage the ship, or to carry out her necessary repairs,
 - 3) to discharge in a suitable place the noxious substances.

Article 22

1. In order to combat the pollution within the Polish sea areas the Director of the Maritime Board may apply directly for assistance to the appropriate agencies of other States being the parties to the Helsinki Convention and, first of all, to those which also may be affected by consequences of the pollution.
2. The Director of the Maritime Board called by an agency of other State being Party to the Helsinki Convention, to render assistance, is under a duty to commence endeavours for rendering such an assistance.
3. In the cases foreseen in paragraphs 1 and 2 the Director of the Maritime Board has to inform the Helsinki Commission on the commenced operations.

Article 23

- I. The Director of the Maritime Board who receives information about pollution within the Baltic Sea Area, likely to create a serious danger to the marine environment of that area, or to the relevant interests of any State being a party to the Helsinki Convention, after making a check, has to pass over all the relevant information immediately to the competent agency of the State which may be affected by consequences of the pollution, together with information concerning the intended or commenced operations and, in respect of accident relating to the ship, to pass over such information also to the competent agency of the State of the ship's nationality.
2. Passing the information, as referred to in paragraph I, to the competent agencies of the States, parties to the Helsinki Convention, has to be continued until notification about operations commenced by such States is obtained.
3. In the cases justified by the extent of the pollution, the Director of the Maritime Board has to pass the information referred to in paragraph 1 to the International Maritime Organisation.

Article 24

1. The Council of Ministers will determine, by way of an ordinance, the organisation and the methods of combatting the pollution on the sea, as well as the agencies and the organisational units taking part in combatting such pollution.
2. The Director of the Maritime Board may order the performance of the functions referred to in Article 21, paragraph 1, item 3 and Articles 22 and 23 to the manager of the organisational unit taking part in combatting the pollution.

Article 25

1. The Minister of Transport and Maritime Economy may pronounce a decision concerning the application on the Polish sea areas, in respect of the ships of Polish nationality, of necessary measures, including the sinking, or destruction of the ship, in order to prevent, reduce, or eliminate a serious and direct danger imminent to the Polish coasts, or to the relevant interests, created as a result of the pollution of the sea, or by the danger of pollution of the sea.
2. In the situation referred to in paragraph 1, with regard to foreign ships found within the Polish sea areas, the provisions of the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, done in Brussels on the 29th of November 1969 (*Dziennik Ustaw* 1976, Nr 35, poz. 207), as well as those of its Supplementary Protocol Relating to Intervention on the High Seas in Cases of Other than Oil Pollution Casualties, done in London on 2nd November 1973 (*Dziennik Ustaw* 1984, Nr 24, poz. 116), are applicable.

Chapter 5

Supervision of Ships

Article 26

The Director of the Maritime Board may:

- 1) with regard to a ship of nationality of the State being a party to the MARPOL Convention 1973/78:
 - a) carry out inspections on the ship, either in a port, or at offshore terminal, within the scope and according to the procedure foreseen in Article 28, as well as controls of the Oil and Cargo Record Books, in order to establish whether any noxious substances have not been thrown overboard in violation of the provisions of the Convention; the results of the inspection are to be shown in the report which has to be passed over to the ship's operator; in the case of violation of the Convention, ascertained with regard to a ship of foreign nationality, the Director of the Maritime Board has to pass over a report thereof also to the agencies of the State of the ship's nationality.
 - b) refuse to the ship foreign nationality the permit of entry, either to the port, or to the offshore terminal, or undertake measures to ensure that the performance of navigation by that ship will not create any essential danger to the marine environment, if the subject ship does not comply with the requirements foreseen in the Convention; such refusal has to be notified by the Director of the Maritime Board to the consul, or the diplomatic representative of the State of the ship's nationality and, if this is not possible - to other competent agency of that State.
 - c) refuse to the ship the permit of departure from the port until the time when she is brought to a proper technical condition, if there are grounds to suspect that the condition of that ship, or her equipment substantially differs from the condition stated in the certificates in hand, or when the ship is not provided with valid certificates; the Director of that Maritime Board, however, may permit that ship to leave the port in order to pass to the nearest ship repair yard.

- 2) with regard to the ships of Polish nationality, irrespective of the application of the measures foreseen in item I, letters a) and c), he may also refuse the ship's admission to the navigation, or withdraw the certificates, if the ship does not comply with the requirements foreseen by the provisions of this Act.
- 3) with regard to a ship of the nationality of a foreign State, not being a party to the MARPOL Convention 1973/78:
 - a) may carry out inspection of the ship, in order to check, whether the ship's condition meets the fundamental requirements of the MARPOL Convention 1973/78; if it is stated that the ship's condition does not comply with such requirements and the performance of navigation by such ship constitutes a substantial danger to the marine environment, he may refuse permission to such ship to enter the port or the offshore terminal,
 - b) if the inspection is carried out in the port, or the offshore terminal, the Director of the Maritime Board may order the ship to undergo suitable repairs, or to leave the port or the transshipment base.

Article 27

The Director of the Maritime Board may:

- 1) demand from a ship sailing through the Polish sea areas, to furnish the information in respect to her identification, port of registry, the last and the next ports of call, as well as other information, in the case of justified suspicion that the ship, while sailing through such areas, did violate the provisions of this Act, having caused the pollution, or the danger of pollution.
- 2) carry out inspection of the ship sailing through the Polish sea areas in the following cases when:
 - a) there is a justified suspicion that she did violate the provisions of this Act through a discharge, either causing or creating a danger of considerable pollution of the sea,
 - b) there is a refusal to furnish the information referred to in paragraph I), or, if the information furnished by the ship evidently differs from the real condition and when the circumstances of the case have justified such inspection.

Article 28

1. The inspection of the ship of the nationality of a State being party to the MARPOL Convention 1973/78, should be limited to checking the certificates and other documents foreseen in that Convention.
2. After checking the documents referred to in paragraph I, the inspection may be extended exclusively in the cases:
 - 1) when there is a justified suspicion that the ship's condition or her equipment substantially differs from the condition confirmed in her documents,
 - 2) when the contents of the documents is not sufficient to confirm or to carry out checking of the suspected violating, or
 - 3) when the ship has no valid certificates with annexes.
3. The inspection cannot influence any detention of the ship in the port.

Chapter 6

Principles of Procedure of Director of the Maritime Board

Article 29

The Director of the Maritime Board is under a duty to carry on the proceeding referred to in the present chapter:

- 1) with regard to a ship of Polish nationality:
 - a) which has caused the pollution of the marine environment, or the danger of pollution in violation of the provisions of this Act,
 - b) upon the application on the party of an agency of any State, when there is a suspicion of violation of the provisions of this Act, if evidence material has been secured.
- 2) with regard to a ship of foreign nationality, staying either in a Polish port or in a offshore terminal, which has caused the pollution of the marine environment, or a danger of pollution on the Polish sea areas, in violation of the provisions of this Act.

Article 30

The Director of the Maritime Board is under a duty to carry out such proceedings also with regard to a ship of foreign nationality, staying either in a Polish port or in a offshore terminal, upon the application on the part of:

- 1) agency of any State, when there is a suspicion of a discharge from that ship outside the Polish sea area, if such a discharge has caused, or created the danger of pollution on its internal waters, territorial sea, or on its exclusive economic zone,
- 2) agency of a State being a party to the MARPOL Convention 1973/78, in the matter concerning such a discharge, irrespective of the place where it was effected.

Article 31

The Director of the Maritime Board may institute proceedings, if evidence material has been secured, with regard to a ship of foreign nationality, which:

- 1) is staying in a Polish port, or at a offshore terminal, if she has caused the pollution, or has created a danger of pollution outside the Polish sea areas, in violation of the recognised international rules,
- 2) when sailing through the Polish territorial sea, has caused the pollution, or has created a danger of pollution of that sea area,
- 3) when sailing on the Polish exclusive economic zone, or on the territorial sea, as a result of the pollution in the exclusive economic zone, has caused a considerable damage, or has created a danger of considerable damage to the coast, or in respect of other essential interests of the State.

Article 32

In the case when information is received:

- 1) about pollution of the sea from ships,
- 2) about dumping of the wastes or other noxious matter from ships,
 - the Director of the Maritime Board has to commence immediately an action In order to disclose the offenders and to secure the evidence materials.

Article 33

The Director of the Maritime Board has to advise immediately the appropriate agency of the State of the ship's nationality, as well as of any other State concerned, of the operations and measures undertaken in conformity with this Act, and he has to pass over to them suitable documents concerning such operations and measures.

Article 34

1. During the proceedings the Director of the Maritime Board:
 - 1) admits the evidence materials declared by the agencies of other State,
 - 2) facilitates the participation to the proceedings to representatives of the competent international organisation, of the State of the ship's nationality, as well as any State affected by the pollution of the sea,
 - 3) in the case determined in Article 29, paragraph 1, he may apply to the competent agencies of the other State for assistance in explaining the matter, as well as examine the applications of other States in this respect,

- 4) in the cases determined in Articles 29 - 32, he may detain the ship, but no longer than it is necessary for the purposes of the proceedings.
2. If the proceedings show a violation of the provisions of this Act, the ship, subject to the provisions of Article 26, paragraph 1, letter c), will be immediately released after the payment of a deposit, or upon the presentation of other suitable financial security.

Article 35

With regard to the proceedings specified in the dispositions of this chapter, the provisions of the Administration Proceedings Code shall be applied accordingly.

Chapter 7

Fines

Article 36

1. On a ship's operator from whose ship, while staying on the Polish sea areas, a pollution of the marine environment took place in violation of the provisions of this Act, in connection with the ship's operation, or as a result of dumping in the sea of wastes and other matters - a fine shall be inflicted, equivalent up to 1,000,000 units of account, called the *Special Drawing Rights* (SDR), as defined by the International Monetary Fund.
2. The fine referred to in paragraph 1 shall also be inflicted on a ship's operator of a ship of Polish nationality from which, in violation of the provisions of this Act, pollution took place of the marine environment situated outside the Polish sea areas, in connection with the ship's operation, or as a result of dumping in the sea of wastes or other matters, without a required permit, or contrary to its condition.

Article 37

If a master, or other member of the ship's crew, by not fulfilling the duties imposed on him by force of the law:

- 1) does not take care of the ship's seaworthiness, or other function on the sea concerning the prevention of pollution of the sea,
- 2) does not keep the Oil or Cargo Record Book,
- 3) does not send up the ship to survey or inspection, or renders difficult or impossible her survey or inspection within the limits foreseen in the MARPOL Convention 1973/78,
- 4) causes pollution of the sea,
- 5) does not provide notification of the notified pollution, or report on the imminent danger of pollution or on the pollution of the marine environment,
- 6) does not take necessary measures in order to prevent the pollution, or to limit or eliminate pollution of the marine environment, resulting from an incident,
- 7) does not transmit, upon the demand of competent agencies, the information in the cases foreseen in Article 27,
- 8) does not discharge, either in the port or at the ships repair yard, the remaining noxious matters to land-based facilities, if the volume of the noxious substances left on the ship exceeds the volume of the ship's installations, when taking into account the technical appliances for their harmless removal,
- 9) does not report to the inspection agencies the incidents which exercise a considerable influence on the technical condition of the ship, her appliances or equipment, thus causing a danger to the marine environment, shall be liable to a fine up to an amount not exceeding twenty times the average monthly salary in the national economy for the preceding year, as published by Chairman of the Central Office of Statistics.

Article 38

The competency of the agencies, as well as the procedure of inflicting and collecting the fines for violation of the provisions referred to in Articles 36 and 37, as well as the method of taking use of the amounts collected from the fines, are regulated by the provisions of the Act of 21st March 1991 on the Sea Areas of the Republic of Poland and the Maritime Administration (*Dziennik Ustaw* Nr 32, poz. 131; 1994, Nr 27, poz. 96; 1995, Nr 7, poz. 31).

D SWEDEN

Law (1980:424) concerning measures for the prevention of pollution from ships

Chapter 2

Prohibition against pollution from ships

§ 2

In Swedish territorial sea, exclusive economic zone and in waters of the Baltic Sea Area oil must not be discharged from ships, but must be kept on board or be delivered to oil reception facilities.

Concerning other sea areas the Government or the authority mandated by the Government may issue regulations concerning prohibition of discharges of oil. (Law 1992:1143).

Chapter 8

Water Pollution Fee (Vattenföroreningsavgift)

§1

A special fee (Water Pollution Fee - Vattenföroreningsavgift) will be charged if any of the prohibitions on discharges of oil from ships as specified in Chapter 2, Paragraph 2 of this Law, has been violated and the discharge is not insignificant. A fee will also be charged if a discharge of oil as specified in Chapter 4, Paragraph 2 of this Law, has not been as far as possible limited.

The Water Pollution Fee goes to the Government. Law (1983:463).

§2

The Water Pollution Fee will be charged to the registered shipowner at the time of the violation. If someone else, other than the registered shipowner, at the time of the violation was in absolute command of the operation of the ship the Water Pollution Fee will be charged to this other person. If there is no one to whom the Water Pollution Fee shall be charged according to what has been stated above or if it can not be decided, without considerable delay, who this person is, the Water Pollution Fee will be charged to the one who at the time of the violation was the registered shipowner.

§3

The size of the Water Pollution Fee is calculated according to the table set out below taking into account the quantity of oil discharged and the gross tonnage of the ship. In this context the gross tonnage of the ship is equivalent to the gross tonnage specified in the ship's tonnage certificate. The basic amount is the basic + amount (basbeloppet) according to the Law (1962:381) on General Insurance as calculated at the time of the violation.

Quantity of oil Water Pollution Fee for ships with a gross tonnage of

<i>in litre</i>	<i>less than 3,000</i>	<i>3,001-15,000</i>	<i>15,001-50,000</i>	<i>50,001 or larger</i>
<i>less than 1,000</i>	1	15	2	25
basic amounts (antal basbelopp)				
<i>1,000-26,000</i>	1 and 0.2	1.5 and 0.3	2 and 0.4	2.5 and 0.5
for each additional 1,000 litre in excess of 1,000 litre				
<i>26,001-101,000</i>	6 and 0.16	9 and 0.24	12 and 0.32	15 and 0.48
for each additional 1,000 litre in excess of 26,000 litre				
<i>101,001-501,000</i>	18 and 0.04	27 and 0.06	36 and 0.08	51 and 0.12
for each additional 1000 litre in excess of 101000 litre				
<i>501,001 or more</i>	34 and 0.02	51 and 0.03	68 and 0.04	99 and 0.06
for each additional 1,000 litre in excess of 501,000 litre				

Law (1994:1796)

§4

If a Water Pollution Fee in accordance with Chapter 3 is regarded as being obviously unreasonable, it may be reduced or remitted. Law (1983:463).

§5

The Water Pollution Fee is administered and decided by the Swedish Coast Guard. Law (1988:437).

§6

If it can be reasonably assumed that a Water Pollution Fee will be charged the Coast Guard, or authority mandated by the Government, may issue prohibitions or injunctions related to the ship which are necessary to secure evidence, such as prohibition to leave port or on further voyage, or order the ship to call on a certain port.

On illegal discharges in the Swedish exclusive economic zone, measures according to Paragraph I, Section 6, may only be directed at a foreign vessel located in Swedish territorial water or exclusive economic zone if:

1. it has been established that the ship has made a discharge;
2. that the discharge has or may cause significant damages to Swedish coasts or related interests, or on assets within Swedish territorial sea or exclusive economic zone.

If there is no longer any reason for a measure to be taken according to Paragraph 1 of this section, the measure should be immediately revoked. Law (1992:1143).

§7

If a Water Pollution Fee is charged to the owner of the ship or the cargo, the Coast Guard may decide on prohibitions or injunctions regarding the cargo as stated in Section 6, Paragraph I to secure the Claim on the Water Pollution Fee by the Government. Prohibitions and injunctions are valid until execution.

Decisions under Paragraph 1 may be issued before the Water Pollution Fee is decided, if there is probable cause that a Water Pollution Fee will be charged to the owner of the ship or of the cargo.

If security for full payment of the Water Pollution Fee is put on, or if there are no reasons for prohibitions or injunctions under Section 7, Sub-paragraphs 1 or 2, the prohibition or injunction shall immediately be revoked.

Law (1988:437).

§8

Decisions on prohibitions or injunctions made under Sections 6 or 7 are valid no longer than 14 days from the date of decision.

Law (1983:463).

Regulations and General Guidelines issued by the Swedish Coast Guard concerning Water Pollution Fee (issued 27 April 1995)

Regulations

Introductory regulations

§1 Regulations concerning Water Pollution Fee (VFA) are found in the Law (1980:424, amended 1994:1796) and the Ordinance (1980:789) concerning measures for the prevention of water pollution from ships. In the following the Law is referred to as VFL and the Ordinance to as VFF.

Regulations of importance for the application of the Law and the Ordinance are further to be found in Decree by the National Maritime Administration with regulations on measures for the prevention of water pollution from ships (SJÖFS 1985:19). In the following text the Decree by the National Maritime Administration is referred to as VFK.

§2 A decision concerning Water Pollution Fee can be made in conjunction with discharges from ships of such substances which are included in the definitions of oil, including oily mixtures, made by the National Maritime Administration in the VFK.

§3 According to Chapter I, Section 1 of the VFK a Water Pollution Fee will not be charged for discharges of oil from pleasure crafts.

Chapter 2, Section 10 of the VFK includes further exemptions from the prohibition against discharges of oil. No Water Pollution Fee will be charged in these cases.

§4 Water Pollution Fee shall be decided by the Regional Office of the Coast Guard where the ship has its port of registry when oil is discharged from a Swedish ship outside Swedish territorial sea and Swedish exclusive economic zone.

§5 When the quantity of oil discharged is assessed the method or methods used shall be those which give a reliable estimate of the minimum size of the discharge.

Co-operation

§6 A Water Pollution Fee will be charged for oil discharges in harbours and other areas where the Coast Guard does not have the primary responsibility for combatting according to the Law on Rescue Services (1986:1102). The Regional Offices of the Coast Guard shall

therefore ensure that there are functional and fast routines for reporting on oil discharges to the Coast Guard from the co-operating organisations in the municipalities or from private companies with their own rescue organisation

The Regional Offices are also to ensure that there is co-operation with the Police and the Shipping Inspectorate concerning the Water Pollution Fee as well as other issues which are regulated in the VFL.

Accounting, charging and collection

§7 The Swedish Board of Customs is responsible on behalf of the Coast Guard, for the accounting of the Water Pollution Fee to the Government.

Relevant regulations issued by the Swedish Board of Customs are applicable concerning charging and collection of the VFA.

Security of Payment

§8 A decision on a prohibition or an injunction in accordance with Chapter 8, Section 7 of the VFL shall include information about who is liable for payment and the amount to be secured. The security should be given to the Board of Customs. In the decision it should be specified to which department within the Board of Customs the security should be given.

The security shall consist of a deposition in cash or of a value document with a specific value. Only documents listed in the Regulations of the Swedish Board of Customs (TFS 1983:64) about acceptance of securities for fees to the Board of Customs are to be accepted as securities.

Deposition

§9 If the deposition shall be given for a certain fee, the deposition is given to the Board of Customs which issues a receipt that is handed over to the depositor. The receipt shall specify the amount deposited, and the ship and the discharge involved.

Reporting

§10 The following documents shall be sent to the Coast Guard's Regional Office in conjunction with an investigation about a Water Pollution Fee:

- primary report Water Pollution by oil;
- environmental damage report.

The primary report shall include among others, information about the course of events and information about the minimum quantity of oil discharged to water and how this quantity has been estimated.

§11 A copy of each decision on charging a Water Pollution Fee shall be handed over to the Board of Customs for charging and collection of the fee.

A copy of a decision should also be sent the operative division of the Coast Guard Head Quarter.

Guidelines

The Water Pollution Fee was introduced in 1984 as a new form of sanction in conjunction with illegal discharges of oil to water from ships. The Regulations were included as a new chapter (Chapter 8) to the VFL at the same time as some additions were made to Chapter 9 of the VFL.

The Water Pollution Fee is not to be regarded as a substitute for normal sanctions, but as a complement.

When the new sanction was introduced it was emphasized that the major objective of the sanction was to function in a preventive way and that it therefore had to be economically significant. Another requirement was that it should be fast and simple without jeopardizing the rule of law. These are still the guiding principles in the implementation of the Law.

On 1 January 1993 Sweden established an exclusive economic zone. At the same time the VFL was amended to allow interventions against foreign vessels in conjunction with illegal discharges in the exclusive economic zone. The objectives of the amendments were to prevent, counteract and reduce pollution of the marine environment and are in line with the UN Convention on the Law of the Sea (UNCLOS).

The Water Pollution Fee remained unchanged until 1 January 1995 when the Parliament, based on a proposal by the Coast Guard, increased the Fee substantially. At the same time, it was decided that the Fee should be index-linked and follow the changes in the monetary value. In this way the Fee could function effectively in a longer time perspective.

In order to subdue with illegal discharges from ships there are three, partly parallel, systems of sanctions. In addition to the administrative Water Pollution Fee there is damages under civil law as laid down in the Oil Pollution Act and the system of penal responsibility with fines and imprisonment. The risk of facing civil damages is likely to have the greatest preventive effect followed by the Water Pollution Fee after the increase of the fee.

The Coast Guard acts in different ways within all these three areas. Issues related to the Water Pollution Fee in accordance with the VFL are tried by the Coast Guard. The Coast Guard can be entitled to compensation, through civil damages, for expenditures incurred in conjunction with oil-combatting operations. In relation to crimes against the Law on measures against water pollution from ships, the personnel of the Coast Guard has the authority according to the Law (1992:395) about the participation of the Coast Guard in police surveillance (LKP).

These Regulations are based on the principle that oil should be kept on board or be delivered to an oil reception facility.

Guidelines to Chapter 8, Section 1 VFL

A Water Pollution Fee, in the following text referred to as WPF, is charged when oil is discharged from a ship in contravention of any of the prohibitions on such discharges laid down in Chapter 2, Section 2 of the VFL, unless the discharge is insignificant. According to this section oil must not be discharged from ships within Swedish territorial sea and exclusive economic zone and in the Baltic Sea Area (as defined in VFL Chapter 1, Section 2). A WPF can also be charged when a Swedish ship makes an illegal discharge within other sea areas.

The regulations of Chapter 2 of the VFL imply that a WPF can be charged in two cases, when the prohibition of discharges has been violated (Chapter 2, Section 2) and when a discharge occurring at an accident has not been as far as possible minimized (Chapter 2, Section 4).

- Water Pollution Fee will at all times be charged when an oil discharge occurs as a result of the operation of a vessel (Section 2). Operation is defined not only as oil from the ship's machinery but also as oil from the cargo of the ship. A ship can in some cases e.g. during stays at a shipyard or under towing be regarded as being taken out of operation.
- When the discharge is a result of an accident, a Water Pollution Fee can only be charged if measures to minimize the discharge as far as possible have not been taken. Accidents are defined as incidents when the ship or its equipment have been damaged without the owner or captain acting neither deliberately nor negligently and being aware of the fact that a damage is likely to occur. With regard to damages to the ship's equipment the maintenance of the ship as well as surveillance made must be taken into account in an assessment. Failure to act is not regarded as an accident.

An oil discharge is deemed to be equally serious irrespectively of its occurrence in the open sea or in an harbour.

What should be regarded as insignificant may vary depending on the quality of the oil and its level of dangerousness. The Law does not specify any lower limit regarding the quantity of oil discharged. The assessment must be made on a case-by-case basis taking into account the circumstances related to the discharge.

Exemptions

A Water Pollution Fee will not be charged if the oil discharge has been necessary to ensure the safety of the vessel or to save human lives at sea. In such cases the prohibition against discharges is not in force (see VFK Chapter 2, Section 10).

The VFL is not applicable to foreign state vessels which are not used for commercial purposes e.g. naval vessels. This is stated in VFL Chapter 11, Section compared to VFF Chapter 9, Section 2. Such ships can not be subjected to a Water Pollution Fee. However, a Water Pollution Fee can be levied on discharges from Swedish naval vessels.

As a result of regulations issued by the National Maritime Administration, Water Pollution Fee is not charged on discharges from pleasure crafts. Such discharges are dealt with in accordance with the prohibition against littering in the Law on Nature Conservation.

Clean ballast water may be discharged in accordance with Chapter 2, Section 2 of the VFF. Regulations concerning discharges of oily mixtures and clean bilge water are set out in Chapter 2, Sections 3-6 of the VFIG The quantities allowed to be discharged are however, so small that there are no problems, in practice, to distinguish them from such discharges that can be subject to a Water Pollution Fee.

Evidence

In order for the Coast Guard to be able to charge a Water Pollution Fee to the shipowner sufficient evidence is required that ties the ship to the discharge. A decision on a Water Pollution Fee can only be made if it is obvious that the ship in question has violated the prohibition on discharges.

It is not possible to hold an inquiry with the sole purpose to investigate whether or not a Water Pollution Fee should be charged. As the procedure for charging Water Pollution Fee is supposed to be fast, without jeopardizing the rule of law, the Coast Guard can not normally await the full investigation carried out by the Police in relation to the criminal case. In practice, the two

investigations should, as far as possible, be carried out in parallel, without delaying the handling of the case of Water Pollution Fee.

Guidelines to Chapter 8, Section 2

The Water Pollution Fee shall be charged to the registered shipowner who can be a person or a legal entity.

The principle of strict liability is applicable to the Water Pollution Fee, which implies that the fee shall be levied irrespective of if the discharge has been made deliberately or because of negligence. Failure to act will not result in an exemption from Water Pollution Fee.

Guidelines to Chapter 8, Section 3 VFL

The Water Pollution Fee is settled taking into account the quantity of the discharge and the gross tonnage of the ship. The actual amount is decided in accordance with the table set out in the Law and is related to the basic amount (basbeloppet) as calculated at the time of the discharge.

The Head Quarter of the Coast Guard will distribute the levels of the WPF each year to the Regional Offices.

The quantity of a discharge can be calculated according to different methods. Such methods are for example estimations of pumping velocities and flow times, counting of oil lumps, the area and thickness of the discharge, etc. The basic requirement is that the method or methods used should give a clear estimation about the minimum quantity of the discharge.

Information about the gross tonnage of a ship is generally specified in the ship's tonnage certificate

Guidelines to Chapter 8, Section 4 VFL

A Water Pollution Fee can be regarded as obviously unreasonable, for example when the ship's crew has done everything that rests upon it to prevent the prohibition against oil discharges from being violated.

Guidelines to Chapter 8, Section 5 VFL and Chapter 8, Section 3 VFF

A decision on Water Pollution Fee should be preceded by a communication to the Addressee of the decision of all information related to the case supplied by others than the Addressee. The Addressee should be given opportunity to state his opinion on the information.

Communication may in certain cases be omitted, among others when there are reasons to believe that the execution of the decision may be aggravated or if the decision on the case can not be postponed.

The captain of the ship is, according to Chapter 8, Section 10 of the VFL, authorized to receive and respond to a communication, in accordance with §17 of the Administrative Law. Thus, omission of communication should only be made in exceptional cases. However, there may often be reasons for giving the Party a short time frame for giving his opinion. If possible, the time frame should, however, not be shorter than five days.

When the case has been investigated and a decision concerning Water Pollution Fee has been made, the Party shall be verifiably informed about the decision. The decision shall include a correct reference to the appeal procedure.

Guidelines to Chapter 8, Sections 6 and 7 VFL

Decisions regarding prohibition or injunction in accordance with Chapter 8, Section 6 of the VFL (to secure evidence) or according to Chapter 8, Section 7 of the VFL (to secure payment) which have been made by one of the Coast Guard's Regional Offices are so called decisions of submission (*underställebeslut*). Such decisions shall according to Chapter 8, Section 4 of the WF immediately be submitted to the Coast Guard Head Quarter.

Decisions according to Chapter 8, Section 6 of the VFL may be made by the Swedish National Maritime Administration, if a decision by the Coast Guard can not be awaited and there is a need for prompt and immediate action to secure evidence. Such decision by the National Maritime Administration is also a decision of submission which should be sent immediately to the Coast Guard Head Quarter.

For reasons of legal security it is important that the submission of the decision is made as quickly as possible to the Coast Guard Head Quarter. An appeal to the district court can not be made until a decision has been made by the Coast Guard Head Quarter.

A decision concerning prohibition or injunction in accordance with Chapter 8, Sections 6 or 7 is in no case valid longer than 14 days following the date when the decision concerning the discharge and the ship and its cargo was made. The time of validity for both decisions together may thus, not comprise more than 14 days. Appeal can of course only be made while a decision is valid.

Coercive measures to secure evidence

In accordance with Chapter 8, Section 6 of the VFL, the Coast Guard, and in cases where there are risks in delays also the National Maritime Administration, has the right to intervene against a ship which has violated the discharge prohibitions and which is not willing to participate in the investigation of a suspected discharge. The decisions about prohibitions and injunctions which are specified in the paragraph (prohibition on departure or continuation of voyage, or order to call on a certain port) are just examples. More than one prohibition or injunction may be issued simultaneously.

Obviously, efforts should, at first instance, be made to find flexible and voluntary solutions to secure evidence. This must however, not lead to hesitance to intervene against a ship which, following an identified oil discharge, for example refuses to answer to radio calls.

Coercive measures may be taken against a Swedish ship irrespectively of where the discharge has occurred. The ship may, if deemed necessary, be ordered to heave to and directed to a Swedish port for further investigation.

Coercive measures may also be taken against a foreign ship situated within Swedish territorial sea or exclusive economic zone. If, however, the discharge has occurred in the exclusive zone it is required that it has been established that the discharge comes from the particular ship and that the discharge has caused or can cause significant damages to Swedish coasts or related interests, or on assets in Swedish territorial sea or exclusive economic zone.

If an intervention against a foreign ship has taken place a written communication describing the circumstances around the intervention shall, according to Chapter 8, Section 6 of the VFF compared to Chapter 6, Section 6 of the VFF, immediately be sent to the consul or the nearest diplomatic representation of the country where the ship is registered.

Coercive measures to secure payment

Injunction or prohibition with the purpose to secure payment of the Water Pollution Fee can, according to Chapter 8, Section 7 of the VFL, only be directed towards the person to whom the Fee shall be charged, i.e., normally the registered owner of the ship or, more seldom, the owner of the cargo. If a decision in exceptional cases concerns the owner of the cargo, it must be formulated so as not to limit the possibilities to make use of the ship.

If measures have been taken to secure the Water Pollution Fee it may still be justified to issue a prohibition or an injunction before the decision about the Fee has been made. The Coast Guard may, for example, have to await the results from the analyses of oil samples that have been taken. For this reason the ship may have to be further detained if a security has not been deposited.

Certain actions may have been taken, according to Chapter 7, Section 10 of the VFL, to prevent a ship from departing. This can be done for example by the Customs authority in consultation with the Coast Guard suspending those official duties which rest upon the Customs and, while awaiting the resumption of the official duties detaining certain essential documents of the ship, such as the certificate of nationality and the tonnage certificate. The Pilots shall in addition suspend the official duties that rest upon them.

Guidelines to Chapter 9, Section 3 VFL

A decision on Water Pollution Fee, as well as a prohibition or injunction in accordance with Chapter 8, Sections 6 and 7 of the VFL, can be appealed. It has previously been emphasized that decisions that are to be submitted to the Coast Guard Head Quarters can not be appealed until they have been decided by the Coast Guard Head Quarter.

The appeal is made to the district court which functions as the maritime court at the place where the Regional Coast Guard Head Quarter which has issued the decision is located, i.e., the district courts of Sundsvall, Stockholm, Kalmar and Gothenburg. The document with the appeal should be directed to the district court but should be handed in to the Regional Coast Guard Head Quarter. In order to be tried the document with the appeal should reach the Coast Guard within three weeks following the day when the complainant demonstrably received the decision.

In court cases concerning appeals against decisions by the Coast Guard the State is represented by the public prosecutor (see Chapter 9, Section 5 of the VFL).

HELCOM Recommendation 19/14

A Harmonized System of Fines in Case a Ship Violates Anti-pollution Regulations

Adopted 26 March 1998 having regard to Article 13, Paragraph b) of the Helsinki Convention

THE COMMISSION,

RECALLING Article 4 of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the protocol of 1978 relating thereto (MARPOL 73/78) concerning prohibition of violations of the requirements of that Convention and sanctions to be established therefor,

RECALLING ALSO that one of the goals of the Baltic Strategy for Port Reception Facilities for Ship-generated Wastes and Associated Issues is to substantially decrease operational discharges and to eliminate illegal disposal of ship-generated wastes at sea by ships, irrespective of their nationality, and to prevent violations of anti-pollution regulations of MARPOL 73/78 and the Helsinki Convention,

RECALLING FURTHER HELCOM Recommendation 17/11 concerning reception facilities as one of the means to achieve this goal,

BEING AWARE that the implementation of the Strategy is one of the prerequisites for substantial decrease in the number of operational and illegal discharges and thus for the prevention of the marine environment of the Baltic Sea Area against pollution by ships,

BEARING IN MIND HELCOM Recommendation 19/16 concerning co-operation in investigating violations or suspected violations of discharge and related regulations for ships, dumping and incineration regulations and HELCOM Recommendation 11/9 concerning national regulations of the discharge of sewage in national waters,

NOTING the considerable differences between the legal systems and fine levels in the Baltic Sea States with respect to prosecution of offenders of anti-pollution regulations,

CONSCIOUS of the importance of applying an effective harmonized penal system in cases of conviction of violations of anti-pollution regulations having a deterrent effect on the illegal operational discharges thereby encouraging the use of reception facilities,

RECOGNIZING the need of establishing a system, harmonized to the widest possible extent, for determining the severity of sanctions to imposed on, including calculating the level of fines to be charged when ships violate the Convention's regulations in respect of operational requirements as stipulated in HELCOM Recommendation 17/11,

RECOMMENDS that the Governments of the Contracting Parties to the Helsinki Convention apply the attached criteria for a common minimum level of fines in case a ship violates anti-pollution regulations,

REQUESTS the Governments of the Contracting Parties to report on the implementation of this Recommendation in accordance with the reporting format of the Baltic Strategy for Port Reception Facilities for Ship-generated Wastes and Associated Issues.

***Criteria for a Common Minimum Level of Fines
in Case a Ship Violates Anti-pollution Regulations***

I INTRODUCTION

- 1) The following acts are violations of MARPOL 73/78 and/or the Helsinki Convention:
 - a) Discharges against Annex I of MARPOL 73/78
 - b) Discharges against Annex II of MARPOL 73/78
 - c) Discharges against Annex V of MARPOL 73/78
 - d) Discharges against Regulation 7 (Sewage) of Annex IV of the Helsinki Convention
 - e) Incineration against Regulation 9 (Incineration of Ship-generated Wastes on Board Ships) of Annex IV of the Helsinki Convention (only in internal waters and territorial seas of the Contracting Parties)
 - f) Violations of an obligation to keep the Oil Record Book and the Cargo Record Book properly filled-in
 - g) Lack of signature in Oil and/or Cargo Record Books.
- 2) Only those offences against the anti-pollution regulations of MARPOL 73/78 and the Helsinki Convention which are subject to administrative fines are addressed in the harmonized system of fines.
- 3) The Contracting Parties should - as far as possible within the framework of their legal systems - aim at adopting legislation which allows fines to be imposed on a legal person (shipowner/operator of a ship). Fines imposed on a legal person should be substantially higher than those imposed on a natural person.
- 4) There should be no difference in the level of fines imposed on nationals of the Contracting Parties and foreigners.
- 5) "Special drawing right" (SDR) referred to in this Recommendation means the unit of account as defined by International Monetary Fund (IMF).
- 6) Violations of the duty to keep the Oil and Cargo Record Books properly are regarded as continuing offences. The offence begins when no proper entry is made on the high sea and it ends in the territorial waters of the Contracting Parties (since persons held liable are capable of recording operations subsequently in the Oil and/or Cargo Record Books on the basis of notes and documents kept on board).
- 7) Having regard to the established Exclusive Economic Zones of the Contracting Parties and the national jurisdiction related thereto, the criteria are applicable to all ships violating anti-pollution regulations (except for sewage discharge provisions which in relation to foreign ships can be applied only in internal waters and territorial seas of the Contracting Parties).
- 8) A general criterion with respect to the violations listed in paragraph I 1) is whether they have been committed intentionally or negligently. A higher fine should be imposed on intentional violations than on negligent violations. If discharge regulations have been violated by night, this fact may be interpreted as pointing to an intentional violation.

- 9) With respect to all violations of MARPOL 73/78 and the Helsinki Convention, lower fines than those indicated in Section II may be imposed in individual cases, particularly for less severe violations.

II CRITERIA AND MINIMUM LEVEL OF FINES

In those cases where, under national legislation, offences against MARPOL 73/78 and the Helsinki Convention may be subject to administrative fines, the fines to be imposed should be based on the following criteria:

1) *Annex I of MARPOL 73/78*

- a) Illegal discharge of oil (Regulations 9 and 10)

Criteria:

- Quantity of illegally discharged oily residues
- Environmental damage caused by the discharge

Minimum fine: 1,500 SDR

- b) Violation of the duty to keep the Oil Record Book properly (Regulation 20, paragraphs 4 and 5)

The minimum fine indicated refers to cases in which a quantity of 1 ton has not been recorded in the Oil Record Book, or entries are missing for a period of one week

- i) No Oil Record Book kept on board

Criteria:

- Period of time during which no Oil Record Book has been kept on board (level of fine should be based on the duration of time in which no Oil Record Book has been kept)
- Quantity of sludge not accounted for, based on consumption calculations

Minimum fine: 500 SDR

- ii) Oil Record Book is kept on board but entries are missing or wrong, lack of signature

Criteria:

- Quantity of sludge for which entries are missing or wrong (the level of fine should increase at least with each ton of sludge for which no entries, or wrong entries, have been made)
- In case of bilge water, duration of time during which no entries, or wrong entries, have been made (amount of fine should be based on the length of the period during which the Oil Record Book has not been kept properly).

Minimum fine: 500 SDR

2) *Annex II of MARPOL 73/78*

- a) Illegal discharge of noxious liquid substances (Regulation 5)

Criteria:

- Quantity of substance discharged illegally (the level of fine should increase at least with each ton of illegally discharged substance)
- Category of substance (A, B, C, D)
- Environmental damage caused by the discharge

Minimum fine: 1,500 SDR

- b) Violation of the duty to keep the Cargo Record Book properly, lack of signature (Regulation 9)

The minimum fine indicated refers to cases in which a quantity of 1 ton has not been recorded in the Cargo Record Book, or entries are missing for a period of one week

Criteria:

- Time during which no Cargo Record Book has been kept or during which entries are found to be missing or wrong (the fine should be calculated on the basis of the length of the period in which the Cargo Record Book has not been properly kept)
- Category of substance (A, B, C, D) for which entries are missing or wrong

Minimum fine: 150 SDR

3) *Annex V of MARPOL 73/78*

Illegal discharge of garbage (Regulation 5)

Criteria:

- Quantity of substance discharged (the level of fine should increase at least with each ton of illegally discharged substance)
- Type of substance (plastics, wood, food wastes, etc.)

Minimum fine: 150 SDR

4) *Annex IV of the Helsinki Convention*

Illegal discharge of sewage (Regulation 7 of the 1974 Helsinki Convention and Regulation 5 of the 1992 Helsinki Convention)

Criteria:

- Duration of illegal discharge
- Quantity of sewage discharged

Minimum fine: 100 SDR

5) *Annex IV of the Helsinki Convention*

Illegal incineration of ship-generated wastes on board a ship (Regulation 9 of the 1974 Helsinki Convention)

Criteria:

- Duration of incineration
- Type of incinerated substances

Minimum fine: 50 SDR

BALTIC SEA ENVIRONMENT PROCEEDINGS

- No. 1 JOINT ACTIVITIES OF THE BALTIC SEA STATES WITHIN THE FRAMEWORK OF THE CONVENTION ON THE PROTECTION OF THE MARINE ENVIRONMENT OF THE BALTIC SEA AREA 1974-1978
(1979)*
- No. 2 REPORT OF THE INTERIM COMMISSION (IC) TO THE BALTIC MARINE ENVIRONMENT PROTECTION COMMISSION
(1981)*
- No. 3 ACTIVITIES OF THE COMMISSION 1980
- Report on the activities of the Baltic Marine Environment Protection Commission during 1980
- HELCOM Recommendations passed during 1980
(1981)*
- No. 4 BALTIC MARINE ENVIRONMENT BIBLIOGRAPHY 1970-1979
(1981)*
- No. 5A ASSESSMENT OF THE EFFECTS OF POLLUTION ON THE NATURAL RESOURCES OF THE BALTIC SEA, 1980
PART A-1: OVERALL CONCLUSIONS
(1981)*
- No. 5B ASSESSMENT OF THE EFFECTS OF POLLUTION ON THE NATURAL RESOURCES OF THE BALTIC SEA, 1980
PART A-1: OVERALL CONCLUSIONS
PART A-2: SUMMARY OF RESULTS
PART B: SCIENTIFIC MATERIAL
(1981)
- No. 6 WORKSHOP ON THE ANALYSIS OF HYDROCARBONS IN SEAWATER
Institut für Meereskunde an der Universität Kiel, Department of Marine Chemistry, March 23 -April 3, 1981
(1982)
- No. 7 ACTIVITIES OF THE COMMISSION 1981
- Report of the activities of the Baltic Marine Environment Protection Commission during 1981 including the Third Meeting of the Commission held in Helsinki 16-19 February 1982
- HELCOM Recommendations passed during 1981 and 1982
(1982)
- No. 8 ACTIVITIES OF THE COMMISSION 1982
- Report of the activities of the Baltic Marine Environment Protection Commission during 1982 including the Fourth Meeting of the Commission held in Helsinki 1-3 February 1983
- HELCOM Recommendations passed during 1982 and 1983
(1983)
- No. 9 SECOND BIOLOGICAL INTERCALIBRATION WORKSHOP
Marine Pollution Laboratory and Marine Division of the National Agency of Environmental Protection, Denmark, August 17-20, 1982, Rønne, Denmark
(1983)

*) out of print

**) in print

- No. 10 TEN YEARS AFTER THE SIGNING OF THE HELSINKI CONVENTION
National Statements by the Contracting Parties on the Achievements in Implementing the Goals of the Convention on the Protection of the Marine Environment of the Baltic Sea Area (1984)
- No. 11 STUDIES ON SHIP CASUALTIES IN THE BALTIC SEA 1979-1981
Helsinki University of Technology, Ship Hydrodynamics Laboratory, Otaniemi, Finland
P. Tuovinen, V. Kostilainen and A. Hämäläinen
(1984)
- No. 12 GUIDELINES FOR THE BALTIC MONITORING PROGRAMME FOR THE SECOND STAGE
(1984)*
- No. 13 ACTIVITIES OF THE COMMISSION 1983
- Report of the activities of the Baltic Marine Environment Protection Commission during 1983 including the Fifth Meeting of the Commission held in Helsinki 13-16 March 1984
- HELCOM Recommendations passed during 1983 and 1984
(1984)
- No. 14 SEMINAR ON REVIEW OF PROGRESS MADE IN WATER PROTECTION MEASURES
17-21 October 1983, Espoo, Finland
(1985)
- No. 15 ACTIVITIES OF THE COMMISSION 1984
- Report of the activities of the Baltic Marine Environment Protection Commission during 1984 including the Sixth Meeting of the Commission held in Helsinki 12-15 March 1985
- HELCOM Recommendations passed during 1984 and 1985
(1985)
- No. 16 WATER BALANCE OF THE BALTIC SEA
A Regional Cooperation Project of the Baltic Sea States;
International Summary Report
(1986)
- No. 17A FIRST PERIODIC ASSESSMENT OF THE STATE OF THE MARINE ENVIRONMENT OF THE BALTIC SEA AREA, 1980-1985; GENERAL CONCLUSIONS
(1986)
- No. 17B FIRST PERIODIC ASSESSMENT OF THE STATE OF THE MARINE ENVIRONMENT OF THE BALTIC SEA AREA, 1980-1985; BACKGROUND DOCUMENT
(1987)
- No. 18 ACTIVITIES OF THE COMMISSION 1985
- Report of the activities of the Baltic Marine Environment Protection Commission during 1985 including the Seventh Meeting of the Commission held in Helsinki 11-14 February 1986
- HELCOM Recommendations passed during 1986
(1986)*
- No. 19 BALTIC SEA MONITORING SYMPOSIUM
Tallinn, USSR, 10-15 March 1986
(1986)
- No. 20 FIRST BALTIC SEA POLLUTION LOAD COMPILATION
(1987)

*) out of print
**) in print

- No. 21 SEMINAR ON REGULATIONS CONTAINED IN ANNEX II OF MARPOL 73/78 AND REGULATION 5 OF ANNEX IV OF THE HELSINKI CONVENTION
National Swedish Administration of Shipping and Navigation;
17-18 November 1986, Norrköping, Sweden
(1987)
- No. 22 SEMINAR ON OIL POLLUTION QUESTIONS
19-20 November 1986, Norrköping, Sweden
(1987)
- No. 23 ACTIVITIES OF THE COMMISSION 1986
- Report on the activities of the Baltic Marine Environment Protection Commission during 1986 including the Eighth Meeting of the Commission held in Helsinki 24-27 February 1987
- HELCOM Recommendations passed during 1987
(1987)*
- No. 24 PROGRESS REPORTS ON CADMIUM, MERCURY, COPPER AND ZINC
(1987)
- No. 25 SEMINAR ON WASTEWATER TREATMENT IN URBAN AREAS
7-9 September 1986, Visby, Sweden
(1987)
- No. 26 ACTIVITIES OF THE COMMISSION 1987
- Report on the activities of the Baltic Marine Environment Protection Commission during 1987 including the Ninth Meeting of the Commission held in Helsinki 15-19 February 1988
- HELCOM Recommendations passed during 1988
(1988)
- No. 27A GUIDELINES FOR THE BALTIC MONITORING PROGRAMME FOR THE THIRD STAGE;
PART A. INTRODUCTORY CHAPTERS
(1988)
- No. 27B GUIDELINES FOR THE BALTIC MONITORING PROGRAMME FOR THE THIRD STAGE;
PART B. PHYSICAL AND CHEMICAL DETERMINANDS IN SEA WATER
(1988)
- No. 27C GUIDELINES FOR THE BALTIC MONITORING PROGRAMME FOR THE THIRD STAGE;
PART C. HARMFUL SUBSTANCES IN BIOTA AND SEDIMENTS
(1988)
- No. 27D GUIDELINES FOR THE BALTIC MONITORING PROGRAMME FOR THE THIRD STAGE;
PART D. BIOLOGICAL DETERMINANDS
(1988)
- No. 28 RECEPTION OF WASTES FROM SHIPS IN THE BALTIC SEA AREA
- A MARPOL 73/78 SPECIAL AREA
(1989)
- No. 29 ACTIVITIES OF THE COMMISSION 1988
- Report on the activities of the Baltic Marine Environment Protection Commission during 1988 including the Tenth Meeting of the Commission held in Helsinki 14-17 February 1989
- HELCOM Recommendations passed during 1989
(1989)

*) out of print
**) in print

- No. 30 SECOND SEMINAR ON WASTEWATER TREATMENT IN URBAN AREAS
6-8 September 1987, Visby, Sweden
(1989)
- No. 31 THREE YEARS OBSERVATIONS OF THE LEVELS OF SOME RADIONUCLIDES IN THE
BALTIC SEA AFTER THE CHERNOBYL ACCIDENT
Seminar on Radionuclides in the Baltic Sea
29 May 1989, Rostock-Warnemünde, German Democratic Republic
(1989)
- No. 32 DEPOSITION OF AIRBORNE POLLUTANTS TO THE BALTIC SEA AREA 1983-1985 AND
1986
(1989)
- No. 33 ACTIVITIES OF THE COMMISSION 1989
- Report on the activities of the Baltic Marine Environment Protection Commission during
1989 including the Eleventh Meeting of the Commission held in Helsinki 13-16 February
1990
- HELCOM Recommendations passed during 1990
(1990)*
- No. 34 STUDY OF THE RISK FOR ACCIDENTS AND THE RELATED ENVIRONMENTAL HAZARDS
FROM THE TRANSPORTATION OF CHEMICALS BY TANKERS IN THE BALTIC SEA AREA
(1990)
- No. 35A SECOND PERIODIC ASSESSMENT OF THE STATE OF THE MARINE ENVIRONMENT OF
THE BALTIC SEA, 1984-1988; GENERAL CONCLUSIONS
(1990)
- No. 35B SECOND PERIODIC ASSESSMENT OF THE STATE OF THE MARINE ENVIRONMENT OF
THE BALTIC SEA, 1984-1988; BACKGROUND DOCUMENT
(1990)
- No. 36 SEMINAR ON NUTRIENTS REMOVAL FROM MUNICIPAL WASTE WATER
4-6 September 1989, Tampere, Finland
(1990)
- No. 37 ACTIVITIES OF THE COMMISSION 1990
- Report on the activities of the Baltic Marine Environment Protection Commission during
1990 including the Twelfth Meeting of the Commission held in Helsinki 19-22 February
1991
- HELCOM Recommendations passed during 1991
(1991)
- No. 38 THIRD BIOLOGICAL INTERCALIBRATION WORKSHOP
27-31 August 1990, Visby, Sweden
(1991)
- No. 39 AIRBORNE POLLUTION LOAD TO THE BALTIC SEA 1986-1990
(1991)
- No. 40 INTERIM REPORT ON THE STATE OF THE COASTAL WATERS OF THE BALTIC SEA
(1991)
- No. 41 INTERCALIBRATIONS AND INTERCOMPARISONS OF MEASUREMENT METHODS FOR
AIRBORNE POLLUTANTS
(1992)

*) out of print

***) in print

- No. 42 ACTIVITIES OF THE COMMISSION 1991
 - Report of the activities of the Baltic Marine Environment Protection Commission during 1991 including the 13th meeting of the Commission held in Helsinki 3-7 February 1992
 - HELCOM Recommendations passed during 1992
 (1992)
- No. 43 BALTIC MARINE ENVIRONMENT BIBLIOGRAPHY 1986-1990
 (1992)
- No. 44 NITROGEN AND AGRICULTURE, INTERNATIONAL WORKSHOP
 9-12 April 1991, Schleswig, Germany
 (1993)
- No. 45 SECOND BALTIC SEA POLLUTION LOAD COMPILATION
 (1993)
- No. 46 SUMMARIES OF THE PRE-FEASIBILITY STUDIES
 Prepared for the Baltic Sea Joint Comprehensive Environmental Action Programme
 (1993)*
- No. 47 HIGH LEVEL CONFERENCE ON RESOURCE MOBILIZATION
 Gdansk, Poland, 24-25 March 1993
 Compilation of Presentations and Statements
 (1993)
- No. 48 THE BALTIC SEA JOINT COMPREHENSIVE ENVIRONMENTAL ACTION PROGRAMME
 (1993)
- No. 49 THE BALTIC SEA JOINT COMPREHENSIVE ENVIRONMENTAL ACTION PROGRAMME
 Opportunities and Constraints in Programme Implementation
 (1993)
- No. 50 SEMINAR ON RECEPTION FACILITIES IN PORTS
 Turku, Finland, 16-19 November 1992
 (1993)
- No. 51 STUDY OF THE TRANSPORTATION OF PACKAGED DANGEROUS GOODS BY SEA IN
 THE BALTIC SEA AREA AND RELATED ENVIRONMENTAL HAZARDS
 (1993)
- No. 52 ACTIVITIES OF THE COMMISSION 1992
 - Report on the activities of the Baltic Marine Environment Protection Commission during 1992 including the 14th meeting of the Commission held in Helsinki 2-5 February 1993
 - HELCOM Recommendations passed during 1993
 (1993)
- No. 53 BALTIC MARINE ENVIRONMENT BIBLIOGRAPHY 1991-1992
 (1993)
- No. 54 FIRST ASSESSMENT OF THE STATE OF THE COASTAL WATERS OF THE BALTIC SEA
 (1993)

*) out of print
 **) in print

- No. 55 ACTIVITIES OF THE COMMISSION 1993
 - Report on the activities of the Baltic Marine Environment Protection Commission during 1993 including the 15th meeting of the Commission held in Helsinki 8-11 March 1994
 - HELCOM Recommendations passed during 1994
 (1994)
- No. 56 INTERGOVERNMENTAL ACTIVITIES IN THE FRAMEWORK OF THE HELSINKI CONVENTION 1974-1994
 (1994)
- No. 57 GUIDELINES FOR THE THIRD POLLUTION LOAD COMPILATION (PLC-3)
 (1994)*
- No. 58 ICES/HELCOM WORKSHOP ON QUALITY ASSURANCE OF CHEMICAL ANALYTICAL PROCEDURES FOR THE BALTIC MONITORING PROGRAMME
 5-8 October 1993, Hamburg, Germany
 (1994)
- No. 59 HELCOM SEMINAR FOR EXPERTS FROM ESTONIA, LATVIA, LITHUANIA AND RUSSIA ON THE IMPLEMENTATION OF HELCOM ARRANGEMENTS, OTHER INTERNATIONAL INSTRUMENTS AND RELATED MATTERS
 30 August - 3 September 1993, Riga, Latvia
 (1994)
- No. 60 ACTIVITIES OF THE COMMISSION 1994
 - Report on the activities of the Baltic Marine Environment Protection Commission during 1994 including the 16th meeting of the Commission held in Helsinki 14-17 March 1995
 - HELCOM Recommendations passed during 1995
 (1995)
- No. 61 RADIOACTIVITY IN THE BALTIC SEA 1984 - 1991
 (1995)
- No. 62 ACTIVITIES OF THE COMMISSION 1995
 - Report on the activities of the Baltic Marine Environment Protection Commission during 1995
 including the 17th meeting of the Commission held in Helsinki 12-14 March 1996
 - HELCOM Recommendations passed during 1996
 (1996)
- No. 63 COASTAL AND MARINE PROTECTED AREAS IN THE BALTIC SEA REGION
 (1996)*
- No. 64A THIRD PERIODIC ASSESSMENT OF THE STATE OF THE MARINE ENVIRONMENT OF THE BALTIC SEA, 1989-1993; EXECUTIVE SUMMARY
 (1996)
- No. 64B THIRD PERIODIC ASSESSMENT OF THE STATE OF THE MARINE ENVIRONMENT OF THE BALTIC SEA, 1989-1993; BACKGROUND DOCUMENT
 (1996)
- No. 65 OVERVIEW ON ACTIVITIES 1996
 (1997)*
- No. 66 BALTIC MARINE ENVIRONMENT BIBLIOGRAPHY 1993-1995
 (1997)

*) out of print
 **) in print

- No. 67 WORKSHOP ON THE REDUCTION OF EMISSIONS FROM TRAFFIC IN THE BALTIC SEA AREA
(1997)
- No. 68 THE EVALUATION OF THE RELATION OF ATMOSPHERIC DEPOSITION TO RIVERINE INPUT OF NITROGEN TO THE BALTIC SEA
(1997)
- No. 69 AIRBORNE POLLUTION LOAD TO THE BALTIC SEA 1991-1995
(1997)
- No. 70 THE THIRD BALTIC SEA POLLUTION LOAD COMPILATION
(1998)
- No. 71 THE FINAL REPORT ON THE IMPLEMENTATION OF THE 1988 MINISTERIAL DECLARATION
(1998)*
- No. 72 THE BALTIC SEA JOINT COMPREHENSIVE ENVIRONMENTAL ACTION PROGRAMME: RECOMMENDATIONS FOR UPDATING AND STRENGTHENING
(1998)
- No. 73 OVERVIEW ON ACTIVITIES 1997
(1998)
- No. 74 AGENDA 21 FOR THE BALTIC SEA REGION, SUSTAINABLE DEVELOPMENT OF THE AGRICULTURAL SECTOR IN THE BALTIC SEA REGION
(1998)
- No. 75 RED LIST OF MARINE AND COASTAL BIOTOPES AND BIOTOPE COMPLEXES OF THE BALTIC SEA, BELT SEA AND KATTEGAT
(1998)
- No. 76 MARINE SEDIMENT EXTRACTION IN THE BALTIC SEA - STATUS REPORT
(1999)

*) out of print
**) in print

HELSINKI COMMISSION
Baltic Marine Environment Protection Commission

Katajanokanlaituri 6 B
FIN-00160 Helsinki
Finland

Telephone: +358-(0)9-6220 220
Telefax: +358-(0)9-6220 2239
E-mail: helcom@helcom.fi
<http://www.helcom.fi>

ISSN 0357-2994